RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ३६] गुरुवार ते बुधवार, नोव्हेंबर २०-२६, २०१४/कार्तिक २९-अग्रहायण ५, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 31 OF 2003.–1. Shri. Baban Angad Bhujagade, At Post Kondigre, Tal. Shirol, Dist. Kolhapur.—*Petitioner—Versus*—The Managing Director, Deshbhakta Ratnappanna Kumbhar-Panchaganga Sahakari Sakhar Karkhana Ltd, Ganganagar, Ichalkaranji—*Respondent.*

In the matter of : Revision U/s 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri. Ilaji Jangale, Respondent for the Patitioners.
Shri. M. S. Topkar, Advocate & Shri. D. N. Patil, Advocate for the Respondent.

JUDGMENT

1. This is a Revision by original Complainant challenging legality of order passed below Exh. U-2 in Complaint (ULP) No.50 of 2002 whereby relief of interim temporary reinstatement is refused by rejecting his interim application (Exh.U-2).

2. Present Petitioner (hereinafter referred to as the Complainant) filed above complaint against present Respondent (thereinafter referred to as the Sugar Factory) alleging that he was in employment of Sugar Factory since the year 1989 but was not allowed to join duties on 8th December 2001. He therefore met the Chairman requesting him to allow him to join duties but was not allowed. On the contrary, he was issued a false notice dated 21st December 2001 that he is unauthorisedly absent from 8th December 2001. He then gave explanation dated 4th January, 2002 that he was not allowed to join duties and was never absent. Even then, he was served another notice dated 10th January 2002 that his explanation is incorrect. He then sent letter dated 21st January 2002 that he is willing to join and be allowed to join duties. The Sugar Factory then gave reply dated 29th January 2002 reiterating earlier contentions. It is further alleged by the Complainant that, therefore, the Sugar Factory has illegally dismissed him which is an unfair labour practice under items 1(a), (b)-(d) and (f) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It is then contended that the Sugar Factory is likely to disposess him from the residential quarter on the ground of absenteesm. Finally, the Conplainant prayed for requisite reliefs.

3. The Complainant also made interim Application (Exh.U-2) to direct the Sugar Factory to allow him to join duties till decision of main complaint.

4. The Sugar Factory filed its say-*cum*-written statement at Exh.C-11 contending that the Complainant was unauthorisedly absent from 8th December 2001 and hence notice dated 21st December 2001 was sent to him soliciting his explanation. However, the Complainant did not satisfactorily reply the same. Therefore, another letter dated 10th January 2002 was issued stating that Complainant's explanation dated 4th January 2002 is unsatisfactory. According to the Sugar Factory, therefore, action as per standing order No.12 (9) was complete. It is then contended that the Sugar Factory can treat the absence as misconduct or deal the Complainant under Standing Order No.12. Standing Order 12 (9) provides automatic loss of lien due to absence without leave. Besides, the Complainant is entitled to relief under standing Order No.12 (10) i.e. inclusion of his name in the waiting list and preference in case of employment on a vacant post. Finally, the Sugar Factory prayed for dismissal of the interim application as well as the complaint.

5. The Complainant produced notices sent to him and copies of his explanation and an application dated 5th February 2002 with list Exh. U-7.

6. Learned Labour Court on perusal of documents produced on record and hearing both parties, observed that there are no endorsements of acknowledgement copies of explanation given by the complainant and, therefore, *prima facie* inteference that the Complainant failed to reply the notices and was absent from 8th December 2001, will have to be drawn. It then observed that the Complainant has lost lien over his employment as per Standing Order No. 12 (9) and his services stand automatically terminated. It relied on the decision of Hon'ble Bombay High Court in *N. D. Mule* V/s. *Managing Director, Shetkari Sahakari Sakhar Karkhana Ltd. & Ors. reported in 1998 I CLR at page 716.* Finally, it rejected the interim application (Exh.U-2) on 23rd April 2003. Said order is challenged in this Revision.

7. I heard learned representative of the Complainant as well as learned Advocate of the Sugar Factory. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order refusing to grant interim relief warrants interference?

(*ii*) What order ?

8. My findings on above points, are as under :—

(*i*) No.

(*ii*) The Revision application is dismissed.

Reasons

9. It is not in dispute that the Sugar Factory served notice dated 21st December 2001 upon the Complainant alleging unauthorised absence from 8th December 2001 and called his explanation. The Complainant gave explanation dated 4th January 2002 that he was not allowed to join duties and was never absent. The Sugar Factory gave reply dated 10th January 2002 that his explanation is incorrect. The Complainant gave reply dated 21st January 2002 reiterating his previous contention. The Sugar Factory gave reply on 29th January 2002 reitarating its earlier contention.

10. Despite above factual position, learned Labour Court has observed that the Complainant has not produced a single document to show that he has replied notices in time, as alleged by him. No doubt, the Complainant has not produced acknowledgement of his explanations/letters. However, those are specifically referred by the Sugar Factory in its correspondence. As such, observations of learned Labour Court that the Complainant has failed to reply notices of the Sugar Factory is an error-apparant on the face of the record.

11. Shri. Jangale, learned representative of the Complainant argued that sub-clauses (8) and (9) of Clause 12 of the certified standing orders are not complied by the Sugar Factory. The Complainant repeatedly stated in his explanations/letters that he was prevented from joining the duties. As such, plea of loss of lien is inapplicable. He then submitted that the Complainant is not served with an order terminating his services as contemplated under clause 21 of the standing orders. On the contrary, absence is a misconduct as per clause 23 (f) of the Standing orders but the Complainant is not served with a chargesheet. In fact, his name is still retained in the list of employees who will superannuate between 1st January 2004 to 31st December 2004. But the Labour Court has passed impugned order in a mechanical manner and without application of mind. He further submitted that an enquiry on the ground of abandonment or service is a must and an employer cannot unilaterally say that the workman is not interested in employment. He placed reliance on the decesions in *Gangaram K. Medekar* V/s. *Zenith Safe Hfg. Co. & Ors. reported in 1996 I CLR at page 172.,* and *Mahamadsha Ganishah Patel & Anr.* V/s. *Mastanbaug Consumers' Co-op. Wholesale & Retail Stores reported in 1998 I CLR at page 1205.* He further submitted that clause of automatic termination of service provided in the standing order requires that an opportunity of being heard should be given to concerned employee. For that end, he relied on decisions of hon'ble Apex Court in *M/s. Lakshmi Precision Screws Ltd.* V/s. *Ram Bahagat reported in 2002 Lab. I. C. at page 2968* and *Uptron India Ltd.* V/s. *Shammi Bhan & Anr. reported in 1998 I CLR at page 1043.* Finally, he submitted that the Revision Application be allowed.

12. Shri. Topkar, learned Advocate representing the Respondent—Sugar Factory countered above arguments and replied that two options are available to the Sugar Factory as provided under the standing orders. The Complainant can be chargesheeted on the ground of absence or clause 12(9) of the standing orders of automatic loss of lien can be resorted. The Sugar Factory resorted to later one. The action was already complete as the Complainant was absent since 8th December 2001. As such, provision under clause 12(9) of the standing orders is clearly appliable. Complainant's explanation was found to be unsatisfactory and hence he has lost lien on his appointment. He relied on the deciaion in *N.D.Mule* Vs. *Managing Director, Shetketi Sahakari Sakhar Karkhana Ltd. & Ors. reported in 1998 I CLR at page 716.* He further submitted that decision in Mule's case is clearly applicable and, therefore, no revisional interference is warranted. He placed reliance on the decision of Apex Court in *Punjab and Sind Bank & Ors. V/s. Sakattar Singh reported in 2001 (88) FLR at page 383.*

13. I am respectfully bound by the various decisions relied by both sides. It is held in N. D. Mule's case (referred above) that standing orders are statutory in nature, binding upon the parties and the employer has option either to proceed to punish the workman after complying with the rule of natural justice or to simply pass an order under standing order No. 12(9), wherein workman is deemed to have abandoned the services. It is further observed that such termination could be automatic and nothing further is required to be shown by the employer. It is held in *Gangaram K. Medekar* V/s. *Zenith Safe Mfg. & Ors. reported in 1996 I CLR at page 172 and Mahamadsha Ganishah Patel & Anr.* V/s. *Mastangaug Consumers Co-op. Wholesale & Retail Stores reported in 1998 I CLR at page 1205* that an employer cannot unilaterally say that the workman is not interested in employment and a domestic enquiry is not necessary. It is held in *M/s. Lakshi Precision Screws Ltd. and Ram-Bhagat reported in 2402 Lab. I. C. at page 2968— and Uptron India Ltd.* V/s. *Ahammi Bhan and Anr. reported in 1998 I C.L.R. at page 1043* that doctrine of natural justice is an inbuilt requirement although clause in Standing Order provides for automatic termination of service.

14. It is held in Punjab & Sind Bank's case (referred above) that concept of principles of natural justice should be considered keeping in mind the agreement between the parties as to the manner in which absence should be dealt with and the consequence that would ensue thereof.

15. In the present case, it *prims facie* appears that the Complainant was served with a show cause notice to explain regarding his absence from 8th December 2001 onwards. It is stated in the notice that the Complainant should explain within 48 hours, failing which it will be presumed that he has abandoned his service. According to the Sugar Factory, complainant's explanation is unsatisfactory. In such circumstances, one cannot jump to the conclusion that no opportunity of being heard was extended to the Complainant and particularly when clase 12 (9) of the Certified Standing Orders provides for automatic loss of lien. Thus, *prima facie*, it appears that the Sugar Factory has resorted to Rule 12 (9) which provides for automatic loss of lien. Such recourse is permissible as is held in Mule's case (referred above). In such circumstances fact of enlisting Complainant's name in the list of superannuating employees, does not automatically establish that the Sugar Factory has not resorted to provision of loss of lien, appearing in the certified standing orders.

16. I must state that the controversy as to whether the Complainant was not allowed to join duties or was intentionally absent, is a question of fact and cannot be decided in either way, at this inter-locutory stage. It appears that Complainant explanation was called by the Sugar Factory, same was found unsatisfactory and then the Sugar Factory resorted to opt for clause 12 (9) of the Certified Standing Orders.

17. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act meticulous scrutiny of rival pleadings is unwarranted. Revisional interferance is permitted when there is an apparant error on the face of the record. No doubt, learned Labour Court has misconstrued the facts, however, the fact still remain that a show cause notice was given to Complainant and explanation thereof was found to be unsatisfactory. In such circumstance, the controversy can effectively be decided after extending an opportunity of being heard to both parties. It appears that learned Labour Court has *prima facie* accepted Sugar Factory's plea of loss of lien and observations thereof are plausible as well as justifiable at the interlocatory stage. I, therefore, hold that this is not a fit case warranting revisional interference. Accordingly, I answer Point No.1 in the negative.

18. Before parting with this order, I must state the Complainant was permanently working with the Sugar Factory for many years. Therefore, in the fitness of the matter, final hearing of main complain needs to be expedited.

19. Finally, I pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. & P. be sent to the Labour Court, Kolhapur and the parties shall appear there on 20th November, 2003.

(*iii*) The Labour Court is directed to expedite final hearing of main complaint and disposed of the same within six months from today.

(*iv*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 32 OF 2003.– Shri Babu Davalso Lokapure, At Post Ganganagar, Ichalkaranji, Room No. 15, Ganganagar, Ichalkaranji, District Kolhapur.—*Petitioner*—*Versus*—The Managing Director, Deshbhakta Ratnappa Kumbhar Panchaganga Sahakari Sakhar Karkhana Ltd, Ganganagar, Ichalkaranji—*Respondent.*

In the matter of : Revision u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.—C. A. Jadhav, Member.

Appearances..—Shri Ilahi Jangale, for the Petitioner. Respondent
Shri M. S. Topkar, Advocate & Shri D. N. Patil, Advocate for the Respondent.

Judgment

This is a Revision by original Complainant challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 49 of 2002 by Labour Court, Kolhapur, whereby relief of interim temporary reinstatement is refused while directing the employer not to disturb complainant's possession of his residential quarter till decision of main complaint.

2. Present Petitioner (hereinafter referred to as the Complainant) filed above complaint against present Respondent (hereinafter referred to as the Sugar Factory) alleging that he was in employment of Sugar Factory since the year 1971 but was not allowed to join duties on 8th December 2001. He then met the Chairman requesting him to allow him to join duties but was not allowed. On the contrary, false notice dated 21st December 2001 was served upon him alleging unauthorised absence from 8th December 2001 onwards. He gave an explanation dated 28th December 2002 that he was not allowed to join duties and was never absent. Even then, he was served another notice dated 10th January 2002 that his explanation is incorrect. He then gave reply dated 16th January 2002 reiterating earlier contentions. The Sugar Factory then gave reply dated 21st February 2002 reiterating its earlier contentions. It is then alleged by the Complainant that he approached Government Labour Officer, It is further alleged by the Complainant that, therefore, the Sugar Factory has illegally dismissed him which is an unfair labour practice under items 1(*a*), (*b*), (*d*) and (*f*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

3. The Complainant also made interim application (Exh.U-2) to direct the Sugar Factory to allow him to join duties and not to dis-possess him from the residential quarters till decision of main complaint.

4. The Sugar Factory filed its written statement at Exh.C-11 contending that the Complainant was unauthorisedly absent from 8th December 2001 and was served with notice dated 21st December 2001 soliciting his explanation. However, the Complainant did not reply and his alleged reply is nowhere received by the Sugar Factory. Therefore, another notice dated 10th January 2002 was served upon him notifying that he has lost his lien as per Standing Order No.12(9). The complainant did not reply the later notice as well, within stipulated time and hence the action was complete as per standing order No. 12 (9). It is then contended that the Sugar Factory can treat the absence as misconduct or treat the Complainant under Standing Order No.12. Standing Order 12 (9) provides automatic loss of lien due to absence without leave. Besides, the Complainant is entitled to relief under Standing Order No. 12 (10) *i.e.* inclusion of his name in the waiting list and preference in case of employment on vacant post. Finally, the Sugar Factory prayed for dismissal of the interim application as well as the complaint.

5. The Complainant produced notices sent to him and copies of his explanations and applications, with list Exh. U-9. Learned Labour Court on perusal of documents produced on record and hearing both parties, observed that there are no endorsements of acknowledgement on copies of explanation given by the complainant and, therefore, *prima facie* inference that the Complainant failed to reply the notices and was absent from 8th December 2001, will have to be drawn. It then observed that the Complainant has lost lien over his employment as per Standing Order No. 12 (9) and his services stand automatically terminated. It relied on the decision of Hon'ble Bombay High Court in *N. D. Mule* V/s. *Managing Director, Shetkari Sahakari Sakhar Karkhana Ltd. & Ors. reported in 1998 I CLR at page No. 716.* It further observed that no arguments were advanced by the Sugar Factory regarding retaintion of quarter by the complainant. Finally, it allowed the interim application (Exh.U-2) partly on 23rd April 2003 as above. Said order to the extent of refusing interim temporary reinstatement is challenged in this Revision.

6. I heard learned representative of the Complainant as well as Learned Advocate of the Sugar Factory. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order refusing to grant interim relief warrants interference?

(*ii*) What order ?

7. My findings on above points, are as under :—

(*i*) No.

(*ii*) The Revision application is dismissed.

Reasons

8. It is not in dispute that the Sugar Factory served notices dated 21st December 2001 and 10th January 2002 upon the Complainant. First notice was served calling explanation for absence whereas the second regarding loss of lien as per Standing Order No.12(9). According to the Complainant, he gave explanation to all notices. However, acknowledgement thereof were not produced by him before the Labour Court. In such circumstances, Learned Labour Court has rightly observed that there are no endorsements of acknowledgements on the copies of explanation given by him. These acknowledgments were produced in the Revision Application.

9. Shri Jangale, learned representative of the Complainant argued that sub-clauses (8) and (9) of Clause 12 of the certified standing orders are not complied by the Sugar Factory. The Complainant repeatedly stated in his explanations/letters that he was prevented from joining the duties. As such, plea of loss of lien is in applicable. He then submitted that the Complainant is not served with an other terminating his services as contemplated under clause 21 of the standing orders. On the contrary, absence is a misconduct as per clause 23 (*f*) of the Standing Orders but the Complainant is not served with a chargesheet. In fact, his name is still retained in the list of employees who will superannuate between 1st January 2004 to 31st December 2004. But the Labour Court has passed impugned order in a mechanical manner and without application of mind. He further submitted that an enquiry on the ground of abandonment or service is a must and an employer cannot unilaterally say that the workman is not interested in employment. He placed reliance on the decesions in *Gangaram K. Medekar* V/s. *Zenith Safe Mfg. Co. & Ors. reported in 1996 I CLR at page No. 172* and *Mahamadsha Ganishah Patel & Anr.* V/s. *Mastanbaug Consumers' Co-op. Wholesale & Retail Stores reported in 1998 I CLR at page No. 1205.* He further submitted that clause of automatic termination of service provided in the standing order requires that an opportunity of being heard should be given to concerned employee. For that end, he relied on decisions of hon'ble Apex Court in *M/s. Lakshmi Precision Screws Ltd.* V/s. *Ram Bahagat* reported in *2002 Lab. I. C. at page No. 2968* and *Uptron India Ltd.* V/s. *Shammi Bhan & Anr. reported in 1998 I CLR at page No. 1043.* Finally, he submitted that the Revision Application be allowed.

10. Shri Topkar, Learned Advocate representing the Respondent Sugar Factory countered above arguments and replied that two are available to the Sugar Factory as provided under the Standing Orders. The Complainant can be chargesheeted on the ground of absence or clause 12(9) of the Standing Orders of automatic loss of lien can be resorted. The Sugar Factory resorted to later one. The action was already complets as the Complainant was absent since 8th December 2001. As such, provision under clause 12(9) of the Standing Orders is clearly applicable. Complainant's explanation was found to be unsatisfactory and hence he has lost lien on his appointment. He relied on the decision in *N. D. Mule* V/s. *Managing Director, Shetkari Sahakari Sakhar Karkhana Ltd. & Ors. reported in 1998 I CLT at page No. 716.* He further submitted that decision in Mule's case is clearly applicable and, therefore, no revisional interference is warranted. He placed reliance on the decision of Apex Court in *Punjab and Sind Bank & Ors.* V/s. *Sakattar Singh reported in 2001 (88) FLR at page No. 383.*

11. I am respectfully bound by the various decisions relied by both sides. It is held in N. D. Mule's case (referred above) that standing orders are statutory in nature, binding upon the parties and the employer has option either to proceed to punish the workman after complying with the rule of natural justice or to simply pass an order under standing order No. 12(9), wherein workman is deemed to have abandoned the services. It is further observed that such termination could be automatic and nothing further is required to be shown by the employer. It is held in *Gangaram K. Medekar* V/s. *Zenith Safe Mfg. Co. & Ors. reported in 1996 I CLR at page No. 172 and Mahamadsha Ganishah Patel & Anr.* V/s. *Mastanbaug Consumors Co-op. Wholesale & Retail Stores reported in 1998 I CLR at page No. 1205* that an employer cannot unilaterally say that the workman is not interested in employment and a domestic enquiry is not necessary. It is held in *Ms. Lakshmi*

Precision Screws Ltd. and Ram-Bhagat reported in 2002 Lab. I. C. at page No. 2968 and Uptron India Ltd. V/s. *Shammi Bhan and Anr. reported in 1998 I C. L. R. at page No. 1043.* that doctrine of natural justice is a inbuilt requirement although clause in Standing Order provides for automatic termination of service.

12. It is held in Punjab & Sind Bank's case (referred above) that concept of principles of natural justice should be considered keeping in mind the agreement between the parties as to the manner in which absence should be dealt with and the consequence that would ensue thereof.

15. In the present case, it *prims facie* appears that the Complainant was served with a show cause notice to explain regarding his absence from 8th December 2001 onwards. It is stated in the notice that the Complainant should explain within 48 hours, failing which it will be presumed that he has abandoned his service. According to the Sugar Factory complainant's explanation is unsatisfactory. In such circumstances, one cannot jump to the conclusion that no opportunity of being heard was extended to the Complainant and particulrly when clase 12 (9) of the Cartified Standing Orders provides for automatic loss of lien. Thus, *prima facie*, it appears that the Sugar Factory has resorted to Rule 12 (9) which provides for automatic loss of lien. Such recourse is permissible as is held in Mule's case (referred above). In such circumstances fact of enlisting Complainant's name in the list of superannuating employees, does not automatically establish that the Sugar Factory has not resorted to provision of loss of lien, appearing in the certified Standing Orders.

14. I must state that the controversy as to whether the Complainant was not allowed to join duties or was intentionally absent, is a question of fact and cannot be decided in either way, at this inter-locutory stage. It appears that Complainant's explanation was called by the Sugar Factory, same was found unsatisfactory and then the Sugar Factory resorted to opt for clause 12 (*g*) of the Certified Standing Orders.

15. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act meticulour scrutiny of rival pleading is unwarranted. Revisional interference is permitted whan there is an apparant error on the face of the record. No doubt, Learned Labour Court has misconstrued the facts, however, the fact still remain that a show cause notice was given to Complainant and explanation thereof was found to be unsatisfactory. In such circumstance, the controversy can effectively be decided after extending an opportunity of being heard to both parties. It appears that Learned Labour Court has *prima facie* accepted Sugar Factory's plea of loss of lien and observations thereof are plausible as well as justifiable at the interlocatory stage. I, therefore, hold that this is not a fit case warranting revisional interference. Accordingly, I answer Point No.1 in the negative.

16. Before parting with this order, I must state that the Complainant was permanently working with the Sugar Factory for many years. Therefore, in the fitness of the matter, final bearing of main complaint needs to be expedited.

17. Finally, I pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. & P. be sent to the Labour Court, Kolhapur and the parties shall appear there on 20th November 2003.

(*iii*) The Labour Court is directed to expedite final hearing of main complaint and disposed of the same within six months from today.

(*iv*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 12th November 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 46 OF 2003.–The Shivneri Sahakari Bank Ltd., Ward No.18, Near Shahu Putla, Industrial Estate, Ichalkaranji, through its Manager—*Petitioner*—*Versus*—Shri Pralhad Baburao Powar, Ward No. 3, House No. 642, Avadhut Aakhada, Ichalkaranji, District Kolhapur—*Respondent*.

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri D. S. Desai, Advocate, & Shri P. R. Rane, Advocate for the Petitioner.

Shri A. D. Kuigade, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent— Bank challenging legality of ad-interim order passed below Exh. U-2 in Complaint (ULP) No.157 of 2003 by Labour Court, Kolhapur, whereby he is directed to allow original Complainant to join duties and not to terminate his services without due process of law, with show cause notice returnable on 30th July 2003.

2. Present Respondent— Original Complainant was in employment of the Petitioner - Bank as Receiving Cashier. The Bank terminated him without notice and without enquiry by letter dated 4th June 2003 alleging various misconducts.

3. It is case of the Complainant that the Bank is governed by Bombay Industrial Relations Act, Model Standing Orders framed thereunder, Industrial Disputes Act, the M.R.T.U. and P.U.L.P. Act and other Labour Laws. As per Model Standing Orders No. 22 (3), no employee of the Bank can be dismissed except after holding an enquiry in respect of the alleged misconduct in the manner set-forth in Sub-clause (4). Even then, the Bank has terminated him without enquiry. It is alleged that his termination is an unfair labour practice under items 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. The Complainant, alongwith the complaint, filed an application (Exh. U-2) under section 30 (*2*) of the M.R.T.U. and P.U.L.P. Act to direct the Bank to allow him to join duties or deposit his wages in lieu thereof, till decision of main complaint. Learned Labour Court, then passed ad-interim order, as above, on 23rd June 2003. The same is challenged in this Revision.

4. I heard both Advocates, Considering rivel submissions, following points arise for my determination:—

(*i*) Whether impugned ad-interim order needs to be stayed, at this stage ?

(*ii*) What order ?

5. My findings on above points, are as under :—

(*i*) No.

(*ii*) The Revision is dismissed.

Reasons

6. It is an admitted position that the Bank filed Caveat Application in the Labour Court, Kolhapur against the Complainant prior to presentation of above complaint. Above Complaint is filed on 23rd June 2003. It is not disputed that the Complainant is terminated without notice and without enquiry.

7. Shri Rane, Learned Advocate representing the Bank vehemetaly argued that Bank's Caveat Application was nowhere considered while passing impugned order. He then took me through Rule 75 of Labour Court practice and Procedures Rules and submitted that no urgency was pleaded by the Complainant nor it is explained as to why advance notice could not be given to the Bank.

Ordinarily, no *ex-parte* order be passed. Besides, duration of *ad-interim* order is nowhere stated and it is beyond 15 days which is contrary to Rule 75 (4) of the Rules. In fact, the complainant was working as Cashier and misappropriated cash amount. The Bank, therefore, come to the conclusion of loss of confidence and committing an act of moral turpitude. The Bank will justify its action by leading evidence in Court. Impugned order amounts to final relief. Finally, he submitted that impugned order is unsustainable in law.

8. Shri Kuigade, learned Advocate representing the Complainant countered above arguments and replied that the Bank has not prayed for quashing or setting aside the ad-interim order but has prayed for stay to the same and the stay cannot be a final relief. The charges are vague and the dismissal is in violation of Model Standing Orders. Presentation of caveat does not prevent the Court from passing appropriate orders. The Labour Court, has passed a reasoned order and there is no error apparent on the face of the record. He further submitted that the Bank has not implemented impugned order and cannot resort to revisional jurisdiction by refusing to implement the same.

9. In my judgment, mere lodgment of caveat application does not deprive a Court of its power to pass an order even if the caveator was not heard. As such, order passed without hearing the caveator cannot be said to be without jurisdiction and is operative till it is set-aside according to provisions of law. It appears that lodgment of the caveat was not brought to the notice of the Court but that does not automatically mean that impugned order is bad in law. It is reasoned one and after application of mind. In such circumstances, I am unable to accept that impugned order is bad in law on the grounds that the same was passed without hearing the caveator and is beyond 15 days from its date.

10. As regards merits, regarding dismissal without enquiry and Bank's plea of loss of confidence, the Bank has yet to file its say and written statement, before the Labour Court. As such, any comments on the merits, will be premature and rather unwarranted. Suffice to say that the Bank can well plead its action before the Labour Court and pray for vacation of ad-interim order. The plea that the interim order amounts to final relief can also be pleaded before the Labour Court. In such circumstances, I find that no case is made out to exercise revisional jurisdiction and it is not necessary to stay impugned *ad-interim* order, at this stage. Accordingly, I answer point No.1 in the negative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. & P. be sent to the Labour Court forthwith and the parties shall appear there on 30th July 2003.

(*iii*) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 21st July 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 67 of 2003.—Chief Executive Officer, Zilla Parishad, Kolhapur.—*Revision Applicant.*—*Versus*—Shri Ravindra Kerba Yadav, Plot No. 257, 'A', Phulewadi, Kolhapur.—*Revision Opponent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri A. T. Upadhye, Advocate for the Revision Applicant.
Shri G. P. Pansare, Advocate for the Opponent.

JUDGMENT

This is a Revision by original Respondent Zilla Parishad, Kolhapur, challenging legality of judgment and order passed in Complaint (ULP) No. 265/97 by Labour Court, Kolhapur, whereby the Zilla Parishad is directed to reinstate original Complainant with continuity of service and full back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) made an application on 27th April 1984 to Chief Executive Officer of Zilla Parishad, Kolhapur, that his father is a freedom fighter and he be appointed being a dependent of freedom fighter. Eventually, the Complainant was appointed by order dated 21st June 1984, on the ground that he is an heir and nominated by the freedom fighter. The Complainant then started working on the post of Coordinator and then was promoted by order dated 6th September 1989 on the post of Jr. Assistant. The Zilla Parishad then issued notice dated 8th November 1994 to the Complainant alleging that he has not obtained 'no objection certificate' from the Collector, his appointment is illegal and to showcause why legal action should not be taken against him.

3. The Complainant then gave an explanation dated 6th April 1995, that his appointment is legal and genuine. The Zilla Parishad then issued another notice dated 14th March 1995 calling upon the Complainant to submit requisite details. Zilla Parishad's Chief Executive Officer then recorded statements of the Complainant, his brother Vasant and mother Laxmibai, ultimately, the Complainant was dismissed *vide* order dated 12th June 1997.

4. The Complainant then filed above complaint alleging an unfair labour practice under items 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. *Inter alia*, contending that he is son of a freedom fighter (now deceased) and was legally appointed as per resolutions of Government of Maharashtra. In fact, he had produced all details in response to the show-cause notice and his claim is legal and genuine. He further contended that his termination is without proper enquiry and bad in law. No compensation is paid to him while terminating his services. Finally, the Complainant prayed for reinstatement continuity of service with back wages and other consequential reliefs.

5. The Zilla Parishad filed its Written Statement at C-12 traversing some of the material allegations made by the Complainant. It contended that the Complainant was not related to the freedom fighter as required by Government resolution, but obtained the employment by submitting false and bogus documents. The Complainant applied for appointment claiming to be relative/ dependant of a freedom fighter. Later on Complainant's brother obtained appointment on the ground that he alone is nominated by widow of the freedom fighter. A freedom fighter is legally entitled to nominate only one of his relative for appointment. The Complainant failed to prove his case during the enquiry and therefore, his very appointment was illegal. Consequently, he was required to be terminated. Thus, Zilla Parishad justified its action and prayed for dismissal of complaint.

6. Considering rival pleadings learned Labour Court framed issues at Exh. O-18 and the parties went to the trial. The Complainant produced copies of his appointment order, affidavit of his father-freedom fighter (now deceased) and other concerned documents. He then examined himself on oath at Exh. U-21. The Zilla Parishad produced copies of statements of the Complainant his brother, their mother and other documents regarding appointment of Complainant's brother on the ground of a nominee/dependant of a freedom fighter. It then examined its Deputy Executive Engineer Shri Zende at Exh. 26.

7. Learned Labour Court on perusal of evidence and hearing both parties, held that the Complainant is son of a freedom fighter and was appointed against a vacant post. However, Complainant's brother got appointment on same ground and thus two persons are appointed on same ground. It then observed that the Complainant was rightly nominated and then appointed and condition of obtaining 'No objection Certificate' from the collector of Kolhapur is inconsequential. It also held that there was no suppression of material facts and therefore, Complainant's termination is bad in law. Simultenously it observed that nomination of Complainant's brother by widow of freedom fighter is impermisible and consequential appointment thereof is illegal. Finally, it held that the Zilla Parishad has engaged in an unfair labour practice and allowed the complaint as above. Decision thereof is challenged in this revision.

8. I heard both Advocates at length. Considering rival submissions following points arise for my determination :—

(*i*) Whether impugned finding that Complainant's termination is an unfair labour practice, is legal and proper ?

(*ii*) Whether impugned findings granting reinstatement with continuity of service with full back wages, warrants interference ?

(*iii*) What order ?

9. My findings, on above points, are as under :—

(*i*) Yes,

(*ii*) No,

(*iii*) The application is rejected.

Reasons

10. This being a revision under Sec. 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether documents on record are incapable of supporting impugned decision/order. In other words, whether impugned order is perverse or unjustifiable ?

11. Impugned termination order states that Collector of Kolhapur, after enquiry has found that the Complainant was not dependant/nominated by the freedom fighter and some other is also nominated. It is further stated therein that Complainant has failed to satisfy that he is legally niminated by the freedom fighter.

12. It is not disputed that the freedom fighter died on 12th March 1985. Thereafter Complainant's brother Vasant made an application on 2nd May 1985 to the Zilla Parishad, that deceased freedom fighter was his father, he (Vasant) was dependant on him and he be appointed as a clerk. An Affidavit of widow of the freedom fighter was filed by Complainant's brother in support of his claim. The Zilla Parishad then appointed Complainant's brother on the post of clerk, by order dated 14th January 1987. The Zilla Parishad on realising that Complainant and his brother have sought appointment on the same ground, terminated Complainant's brother. The brother challenged his termination order by filing writ Petition No. 3379/97 in the Hon'ble High Court, wherein Hon'ble High Court directed to extend an opportunity of being heard to Complainant's brother.

13. Shri Upadhye, learned Advocate representing Zilla Parishad, vehementally argued that only one nomination by a freedom fighter is permissible. However, the Complainant as well as his brother obtained employment on same grounds and thereby deceived the Government. Complainant's brother is in employment. Now, it has revealed during the enquiry by the Collector that another brother Uday has obtained 'No objection Certificate' from the Collector for being appointed as a dependant/nominee of freedom fighter. It was encumbant upon the Complainant to obtain 'No objection Certificate' of the Collector while seeking the employment. However, same was not obtained and hence his appointment itself is illegal. The Complainant has admitted in

the cross examination that his brother obtained employment on the same ground and their addresses are same. As such, there is clearly a collusion between Complainant and his brother. As such, the Complainant has suppressed material facts and he is not entitled to any relief. Shri Pansare, learned Advocate, representing the Complainant countered above arguments and replied that the Complainant is appointed in the year 1984, whereas Government resolution of obtaining no objection certificate from the Collector is of the year 1985. It is not disputed that deceased freedom fighter sworned in the form of an affidavit, that his son Ravindra be appointed. As such, there was absolutely no suppression by Complainant while seeking appointment. Actions of Complainant's brother while seeking employment and illegalities therein cannot be atributed to the Complainant. Resolution dated 22nd November 1985 to obtain no objection certificate cannot be retrospective and the Complainant was appointed after scrutinising his entire case. The Complainant cannot be punished for wrongs or illegalities committed by his brother. In the circumstances the Labour Court has taken legal and justifiable view and it does not warrant revisional interference.

14. The factual position is no longer disputed by the parties. It is not disputed now, that the Complainant is son of freedom fighter. As regards plea of suppression, the same is without substance. No other person was nominated by the freedom fighter in the year 1984, as well as during his life time. The Zilla Parishad scrutinised Complainant's application and all other documents and then appointed him. It is seen that Complainant's brother after demise of his father freedom fighter, applied for employment and that too on nomination of his mother widow of freedom fighter. In the circumstances it cannot be accepted by any stretch of imagination that the Complainant suppressed material facts. So as to achieve illegal benefits and that too while seeking employment.

15. As regards condition of obtaining NOC from the Collector, resolution thereof is issued on 22nd November 1985 *i.e.* after Complainant's appointment. Consequently, it cannot be accepted that the Complainant was under statutory obligation to obtain NOC prior to applying for appointment. Shri Upadhye tried to canvas that condition of obtaining NOC was prevailing/ prescribed since long. However, no material was produced before learned Labour Court to substantiate such condition. On the contrary, it appears that Government received complaints of more nomination and then resolution dated 22nd November 1985 to seek NOC came to be issued. Considering peculiar facts of this case, condition of obtaining NOC has no legal significance and cannot be a legal ground to terminate the Complainant.

16. In light of above discussion, I find that learned Labour Court has rightly recorded an affirmative finding of an unfair labour practice. The impugned decision does not Spell of arbitrariness or perversity. On the contrary, there is substance in its reasoning. Therefore, I answer points No. 1 and 2 accordingly.

17. Before parting with this order. I must state that above observations are strictly restricted to Complainant's termination only, and has no concern with the termination of his brother. To conclude, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 5th November 2003.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 69 of 2003.—Sangli District Primary Teachers Co-operative Bank Ltd., Hutatma Annasaheb Patravale Marg, Sangli, through its Chief Executive Officer and Chairman.—*Petitioner.*—*Versus*—Shri Vilasrao Ramchandra Ghorpade, R/o. Trimurti Colony, Vikas Chowk, 100 Ft. Road, Sangli.—*Opponent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri A. T. Upadhye, Advocate for Petitioner.

Shri S. S. Mutalik, Advocate for Opponent.

JUDGMENT

This is a Revision by original Respondent Bank challenging legality of ex-parte ad-interim passed below Exh. U-2 in Complaint (ULP) No. 39 of 2003 by Labour Court, Sangli directing to allow original Complainant to cross examine bank witnesses by re-opening his enquiry and not to terminate his service on the basis of ex-parte enquiry by maintaining statusquo, until further orders.

2. Admittedly, the Bank served chargesheet dated 17th January 2003 upon present Respondent (hereinafter referred to as the Complainant alleging negligence and dis-honesty. It was kept for hearing on 22nd August 2003. It is alleged by the Complainant that enquiry was hurridly completed on 22nd August 2003 itself by rejecting his application for adjournment. He then filed above complaint on 25th August 2003 against the Bank alleging unfair labour practices under item 1(a), (b) (f) and (g) of Sch. IV of the M.R.T.U. and P.U.L.P. Act aprehending termination. He also made an interim application (Exh. U-2) under section 30(2) of the M.R.T.U. and P.U.L.P. Act to direct the Bank to afford opportunity to cross examine management witnesses and submit his defence, further directions to maintain statusquo regarding his employment and not to take further action in the enquiry, pending the hearing and final disposal of main complaint. Learned Labour Court, then passed ad-interim order, as above, on same date. The same is challenged in this Revision.

3. I heard both advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding order issuing various directions to the Bank warrants interference ?

(*ii*) What order ?

4. My findings on above points are as under :—

(*i*) Yes, to the extent of setting aside directions to give opportunity to cross-examine Bank's witnesses by re-opening the enquiry.

(*ii*) The Revision Application is partly allowed.

Reasons

5. Learned Labour Court has given three directions to the Bank *vide* impugned ad-interim order. Firstly, the Bank is directed to allow the Complainant to cross examine its witnesses by re-opening the enquiry. Secondly, the Bank is directed not to discharge/dismiss the Complainant on the basis of ex-parte enquiry and thirdly, the bank is directed to maintain status-quo regarding Complainant's employment.

6. Shri Upadhya, learned Advocate representing the Bank ehementaly argued that the Complainant took various adjournments in the enquiry and, therefore, it was closed on 22nd August 2003. However, no show cause notice is given to the Complainant and his apprehension of dismissal is totally premature. No reasons are given in the interim application as to why no advance notice was given to the Bank. Legality of enquiry is yet to be decided. The Bank has every right to lead

evidence, if the enquiry stands vitiated. Even then, the labour Court has unilaterally directed to re-open the enquiry presuming that it stands vitiated. He then submitted that, therefore the Labour Court has exceeded his jurisdiction. In addition, no reasons are given for waiving previous notice to other side as well as while passing ex-parte order. Mere urgency of the Complainant cannot be a legal ground to waive advance notice or regular notice to the Bank. Finally, he submitted that impugned order is bad in law.

7. Shri Mutalik, learned Advocate representing the Complainant replied that the Bank ought to have appeared on 6th September 2003 *i.e.* the date of appearance before the Labour Court, ought to have filed its pleadings and got the interim order vacated. However, it preferred to challenge the same before this Court. Bank's such approach is unfair and should not be entertained. In support of his arguments, he relied on the decision is *Nashik Workers Union* V/s. *Mahindra and Mahindra Ltd. and Ors. reported in 1993 II CLR at page 707 (Bombay H. C.).* Finally, he submitted that no revisional interference is warranted at this stage.

8. It is not in dispute that the enquiry was completed on 22nd August 2003 and the Complainant approached the Labour Court on 25th August 2003. It is also not in dispute that he is served with copy of enquiry report, if any and show cause notice. There is no explanation on his part as to why he did not give advance notice to the Bank while filing the complaint. As such, the manner in which he filed the complaint is improper. It would have been better if he had given advance notice to the Bank.

9. Admittedly, issue regarding legality of the enquiry is yet to be decided. As such, directions in impugned order to allow the Complainant to cross-examine bank's witnesses by re-opening the enquiry, are totally premature, bad in law and naturally required to be set aside. Said controversy will have to be decided after hearing both parties and perusal of enquiry papers. Likewise, bank's right to lead evidence if the enquiry is vitiated is to be honoured. As such, impugned orderwarrants interference to the extent of setting aside directions to re-open the enquiry.

10. As regards other two directions *i.e.* not to discharge/dismiss the Complainant as per completed enquiry and to mainain statusquo regarding his employment in my judgment any observations thereof, will be premature. Suffice to say that the Bank can appear before the Labour Court and put its case. Learned Labour Court, thereafter, shall decide the application (Exh. U-2) for interim relief. At this stage, it is not necessary to make any observations regarding the two directions. I answer point No. 1 accordingly and pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned order to the extent of directing to given opportunity to the Complainant to cross-examine Bank's witnesses by re-opening the enquiry, is set-aside.

(*iii*) The Labour Court is directed to decide interim application (Exh. U-2) according to provision of law.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th September 2003.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 83 of 2003.—Executive Engineer, Sindhudurg Khar Land Development Division, Kankavali, Dist. Sindhudurg.—*Revision Applicant.—Versus*—Shri Prasad Bhaskar Rajadhyax, R/o. Bajar Peth, Kankavali, Dist. Sindhudurg.—*Revision Opponent.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.—Shri C. A. Jadhav, Member.

Appearances.—Shri A. M. Peerzade, Asst. Govt. Pleader for the Rev. Applicant/Petitioner.

Shri D. N. Patil, Advocate for the Opponent.

JUDGMENT

This is a Revision by original Respondent Executive Engineer of Sindhudurg Khar Land Development Div. Kankavali, challenging legality of Judgment and order passed in complaint (ULP) No. 148/91 by Labour Court, Kolhapur, whereby he is directed to reinstate his employee-original Complainant with continuity of service, but without back wages.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) firstly appointed by the Executive Engineer as a typist for a period of 29 days *w.e.f.* 1st October 1986, *vide* order dated 26th September 1986. He was then appointed from time to time by identical orders of 29 days. His last appointment was for the period 2nd May 1991 to 4th May 1991.

3. Above complaint was filed on 31st May 1991, alleging an unfair labour practice under items 1(a), (b) and (d) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, interalia, contending that the Complainant was appointed to do work of perrenial nature and against a vacant permanent post. But, he was given appointment orders of 29 days each to deprive benefits of permanency. In fact, the Complainant has requisite educational qualifications to work as typist and his past record is clean. It is then contended that Complainant has put continuous service of more than 240 days in each calender year and is a deemed permanent employee as per the provisions of Industrial Employment (Standing Orders) Act. It is further alleged that he is not paid retrenchment compensation and his termination is in violation of provisions of section 25F and 25G of the Industrial Disputes Act. Finally, the Complainant prayed for reinstatement with continuity of service with full back wages.

4. The Complainant also filed application (Exh. U-2) for interim relief. Learned Labour Court directed Executive Engineer to allow the Complainant to join duties until further orders with showcause notice. Consequently, the Complainant was temporarily re-appointed and again terminated on 27th December 1991.

5. The Executive Engineer filed his say-cum-written statement at Exh. 10, contending that the Complainant was temporarily appointed against a post reserved for scheduled caste candidate. Requisite candidate Shri Suryavansi was appointed and hence the Complainant was discontinued. It is then explained that therefore, provisions of Sec. 25F and 25G of Industrial Distpute Act are in applicable. Finally, the Executive Engineer justified his action and prayed for dismissal of interim application as well as the main complaint.

6. Considering rival pleading the Labour Court framed issues and parties went for trial. The Complainant produced 3 appointment orders and certificate of the Executive Engineer that he (Complainant) is working temporarily as a typist from 1st October 1986 to 3rd March 1991, with list Exh. U-4. In addition he examined himself on oath at Exh. U-28. In rebuttal, the Executive Engineer produced copies of 53 appointment orders of Complainant as well as appointment order of Shri Suryavansi, with list Exh. C-27. He then examined himself at Exh. C-33.

7. Learned Labour Court, on perusal of evidence and hearing both parties, observed that the Complainant has put continuous service of more than 240 days in each calender year and was entitled to protection of provisions under section 25F and 25G of the Industrial Distputes Act. It then held that therefore, Complainant's termination is in violation of provisions of Industrial Disputes Act and is an unfair labour practice. It then allowed the complaint partly, as above on 19th June 2003. Said decision is challenged in this revision.

8. I heard both sides. Considering rival submissions following points arise for my determination :—

(*i*) Whether impugned finding that Complainant's termination is in violation of provisions under section 25F and 25G of the Industrial Disputes Act, is an unfair labour practice, warrants interference ?

(*ii*) Whether impugned order directing reinstatement with continuity of service without back wages, warrants intereference ?

(*iii*) What order ?

9. My findings on above points are as under :—

(*i*) No.

(*ii*) No.

(*iii*) The Revision Application is dismissed.

Reasons

10. This being a revision under Sec. 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings meticulously. The only material question is whether documents on record are incapable of supporting impugned decision/order. In other words, whether impugned order is perverse or unjuatifiable?

11. Shri Peerzade, learned Asst. Govt. pleader, representing the Executive Engineer vehamentally argued that the post on which the Complainant was working was reserved for a scheduled caste candidate, such candidate was appointed and hence the Complainant was discontinued. All appointment orders clearly state that the Complainant is appointed temporarily and can be discontinued at any time without assigning any reasons. The Complainant is bound by the conditions therein. But the Labour Court ignored all material aspects and recorded perverse findings of an unfair labour practice.

12. Shri Patil, learned Advocate representing Complainant replied that the Complainant is working continuously from 1st October 1986, has admittedly put continuous service of more than 240 days in every year and his termination in violation of Sec. 25F and 25G of the Industrial Disputes Act is clearly an unfair labour practice.

13. The Executive Engineer has admitted in his cross examination that he can appoint temporary employees with approval of circle office and the Complainant has worked for more than 240 days in each calender year. He also admitted that a temporary employee, on completion of 5 years service as a temporary is entitled to be converted/taken on converted regular temporary establishment. It is also an admitted position that no retrenchment compensation was paid to the Complainant while terminating/discontinuing his services. Section 25F of the Industrial Disputes Act does not make difference between temporary and permanent employee. I therefore, find that learned Labour Court has rightly held that Complainant's termination is an unfair labour practice. I must state that the Complainant has not prayed for permanancy and the Labour Court has no jurisdiction to grant relief of permanancy. The contraversy is strictly restricted to his termination by violating mandatory provisions under section 25F and 25G of the I. D. Act. The Complainant's reinstatement does not automatically mean that he has gained permanency. As such, the plea that a candidate belonging to S. C. category was appointed, and therefore, Complainant was terminated, is of no help to the Executive engineer. He was bound to follow the provisions under section 25F and 25G of the Industrial Disputes Act.

14. It is an admitted position that the Complainant served notice through his advocate, dated 29th October 1996 upon the petitioner to comply the interim order. Then he was appointed by order dated 17th December 1996 and is still in employment. He was appointed to do work of perrennial nature and therefore, plea that he was appointed to do work of temporary nature is baseless.

15. To summarise, impugned decision does not spell of arbitrariness or perversity. On the contrary, there is every substance in its reasoning and there is no merit in the revision application.

16. To conclude, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) The parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Mah. Kolhapur.

Kolhapur,
Dated the 18th November 2003.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Mah. Kolhapur.

IN THE INDUSTRIAL COURT, AT MUMBAI

COMPLAINT (IT) No. 30 of 1996.—IN—REFERENCE (IT) No. 24 of 1996.—Shri N. Sunder, C/o. P. S. Belel, 5, Ram Niwas, Aarey Road, Goregaon East, Mumbai-400 063.—*Complainant.*—*Versus*—M/s. Raptakes, Brett and Company Limited, 47, Dr. Annie Besant Road, Worli, Mumbai-400 025.—*Respondent.*

In the matter of complaint under Sec.33-A of the Industrial Disputes Act,1947.

PRESENT.—Shri P. P. Patil, Industrial Tribunal, Mumbai.

Appearances.—Mr. A. P. Kulkarni, Advocate for the Complainant.

Mr. B. K. Hegde, Advocate for the Respondent Company.

JUDGMENT ON PRELIMINARY ISSUE

(Dated the 13th October 2003)

1. As the judgment is only on the point of preliminary issue, therefore, entire pleadings of the parties are not necessary for consideration in judgement. Therefore, the pleadings restricted to the preliminary issue have taken into account.

2. The present complaint is under Sec. 33-A of the Industrial Disputes Act, 1947. Complaint N. Sunder is claiming that the Respondents engaged in unfair labour practice by committing breach of mandatory provisions of Sec. 33(*2*)(*b*) of the Industrial Disputes Act, while terminating his services by order dated 8th August 1996 though Reference (IT) No. 24 of 1996 pending before this Court. The Complainant was served with show cause notice dated 9th June 1994 to which he has given reply on 12th July 1994. Thereafter the Complainant was served with chargesheet dated 8th December 1994 and he replied it on 31st December 1994. Domestic enquiry was initiated against the Complainant during the period from 23rd March 1995 to 2nd December 1995 and after the enquiry report submitted by the enquiry officer, the Respondent company has terminated services of the Complainant with effect from 8th August 1996. The enquiry is challenged on the grounds that the chargesheet served upon the Complainant on the false reasons, list of witness and list of documents were not supplied, the chargesheet is vague, none of the doctors were examined, request of the Complainant to engage an advocate to defend him was turned down, and sufficient opportunity was not given to the Complainant to defend himself in enquiry.

3. The Respondent company in support of their action of termination of service of the Complainant made averment in the written statement that the enquiry was based on the principles of natural justice, fair and proper opportunity was given to the Complainant to defend himself. It is contended by the Respondent company that principles of natural justice does not require the management to give list of witnesses and documents alongwith chargesheet. According to the Respondent company, doctors were not within the control of the management or enquiry officer. The witnesses of the management were exhaustively cross examined by the Complainant and his defence representative. Lastly, contended by the Respondent company that no real prejudice is caused to the Complainant.

4. After having been considered the pleadings of parties in all 8 issues are framed, out of which Issue No. 3 is on the point of fairness of enquiry. Issue No.3 is treated as preliminary issue, which is the only issue taken for decision.

Issue No. (3) :—

"Whether the Complainant has proved that the enquiry initiated against him by the Respondents is not fair, proper and legal ?"

Reasons

5. At the outset there is no dispute over the subject of initiating domestic enquiry against the Complainant. The charges levelled against the Complainant as per the chargesheet dated 8th December, 1994 are :—

(*i*) "Wilful insubordination or disobedience whether or not in combination with another of any lawful and reasonable order of superior."

(*ii*) Wilful slowing down in performance of work or abetment or instigation thereof."

(*iii*) "Commission of any act subvarsive of discipline or good behavior on the premises of the establishment."

(*iv*) "Habitual neglect of work or gross or habitual negligence."

During enquiry the Complainant was represented by R. K. Saha. The proceedings in enquiry are challenged on the following grounds :—

(*i*) List of witnesses and list of documents were not furnished alongwith the chargesheet to the Complainant.

(*ii*) Coplainant was not allowed to be defended by an advocate;

(*iii*) the enquiry was conducted at Madras and Mr. R. K. Saha representative of Complainant was staying at Calcutta and difficult for him to defend enquiry proceedings regularly;

(*iv*) the Complainant was not given sufficiant opportunity to defend himself in the enquiry;

(*v*) material witness not examined by the company.

5. The Complainant has examined himself and also placing reliance on the letter addressed to the company and the letters received by him from the company keeping reliance to the enquiry proceedings. In evidence the Complainant has stated as to how injustice is caused while conducting the enquiry by not furnishing the list of witnesses and list of documents, alongwith chargesheet, by not examining doctors whose names are mentioned in the chargesheet, the chargesheet is vague. In short, according to the Complainant, enquiry initiated against him was not based on the principles of natural justice. By letter dated 23rd March 1995 the Complainant had asked the enquiry officer to furnish xerox copies of all documents on which the management placing reliance or to allow him to verify originals, supply copy of enquiry proceedings, furnish list of documents and names of witnesses. In the letter dated 27th April 1995 the Complainant made grievance that his request for supply copies of documents not being considered during examination of the management witness Mr. Thyagarajan on 20th April 1995 and certain documents are referred. Letter dated 30th October 1995 addressed by the Complainant to the enquiry officer requesting thereby to extend co-operation and do not take *ex-parte* decision. The letters sent to the concerned doctors and their reply also made available in the enquiry proceedings to show that on the basis of the complaint made by doctors chargesheet was served upon the Complainant. But the case of the Respondent company is complaints of doctors not only material to issue chargesheet to the Complainant but their star witness is the Area Manager who made investigation and submit report about not delivering gifts/samples to the concerned doctors during his visits and it being part and parcel of duty of the Complainant committed misconduct posing himself of delivery of gifts/samples to the concerned doctors and on this basis the charges set out in the chargesheet levelled against the Complainant. According to the Complainant, the allegations made in the chargesheet are vague and no specific dates of alleged incidents given in the chargesheet. The learned Advocate for the Respondent company has pointed out admissions given by the Complainant in his cross examination to the effect that the witnesses of the management have been cross examined by him or his defence representative saha and the enquiry officer had afforded an opportunity to bring all material on record and after his declaration that no evidence or material remained to be brought and then concluded the enquiry on 29th January 1996. The Respondent company is trying to show as to how the enquiry was fair and proper and every opportunity was given to the Complainant to cross examine the Respondent's witnesses and after the Complainant's statement was recorded with satisfaction of the Complainant enquiry was completed.

6. The learned advocate for the Respondent has placed reliance on the judgements of Apex Court and High Courts in support of his argument and trying to convince the Court as to how the enquiry initiated against the Complainant was legal, fair, proper and based on the principles of natural justice. The learned advocate for Respondent is taking assistance of the ratio laid down in the case of State of Hariyana and another *V/s* Rattan Singh reported in 1977 LAB IC 845 SC. wherein held in Para 4.

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudentmind are permissible."

I do admit that the strict rule of evidence for conducting domestic enquiry is not applicable as the essence of a judicial approach is objectively, exclusion of extraneous materials or considerations and observance of rules of natural justice. Further the learned Advocate for the Respondent has submitted that when opportunity was given to the Complainant to cross examine the Respondents's witnesses and meet out his defence, it cannot be said that the readonable opportunity was not afforded and in support of his contention placed reliance on the case of K. K. Tripathi V/s State Bank of India and others reported in 1983 LAB IC 1680 SC, wherein held in Para 41—

> "The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons."

Further reliance is placed by the learned advocate for the Respondent on the case of State Bank of Patiala and Ors. *V/s* S. K. Sharma reported in 1996 II CLR 29 SC, wherein held in Para 28—

> "A distinction ought to be made between violation of the principles of natural justice, audi alteram partem is such and violation of a facet of the said principle. In other words, distinction is between "no notice"/ "no hearing" and" no adequate hearing " or to put it is different words "no adequate opportunity" and "no adequate opportunity".

According to the Respondent, when the Complainant has taken active part in the enquiry proceeding and availed of all possible opportunities to defend himself, therefore, he has no right to raise objection that the enquiry was not conducted in accordance with the principles of natural justice. Further reliance is placed on the case of B. C. Chaturvedi *V/s* Union of India and others reported in 1996 I CLR 389 SC, wherein held in Para 14—

> " It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own finding of fact to that of a disciplinary/appellate authority."

The Respondent is trying to show as to how the powers conferred on the Court is limited in respect of appreciation of evidence in the enquiry and cannot interfere with the finding of facts recorded during enquiry. The Respondent is also taking assistance of the ratio laid down in the case of Ramdas G. Patil *V/s* General Manager, BEST Undertaking reported in 2000 II CLR 151 Bombay, wherein held in Para 10—

> "The denial by the delinquent Conductor and also the lady passenger are mere after thought and later developments. There is no doubt in my mind that the lady passenger must have been overcome and must have been very strongly requested to protect the Conductor otherwise he would lose his job. The lady passenger in turn considering the fact that the delinquent Conductor could be saved by her, she made a volte face and faltly denied that she was assaulted by the delinguent Conductor."

Thus, according to the Respondent, attempted have been made by the Complainant to win over doctors and obtain letters to suit his defence and doctors have issued the letters to protect interest of the Complainant under the impression that he would lose his job, therefore, such letter is a subsequent creation made by the Complainant after thought. While canvassing arguments,

the learned advocate for the Respondent demonstrated that when proper enquiry has been made and finding of misconduct has support from the evidence adduced during enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate authority. To substaniate the argument, the learned Advocate for the Respondent is placing reliance on the case of Brook Bond India Private Limited *V/s* S. Subha Raman and another reported in 1962-63 FJR (63) 424 SC wherein held that—

> "The Commissioner of Labour has held that the refusal of the enquiry officer to permit counsell in one case and an outsider in the other was justified and therefore there was no full and fair enquiry into the charges against the two employees. He therefore refused to give the permission as prayed."

Last submission made by the learned Advocate for the Respondent in view of ratio laid down in the case of Amar Dye-Chem Limited *V/s* MR Bhope and another reported in 1994 LAB IC 1248 Bombay that non supply of copies of some of the documents, which were not relevant and material, did not amount to violation of principles of natural justice and to substantiate his argument placed reliance on the above case wherein held in Para 9—

> "Non supply of copies of some of the documents which were relevant or material did not amount to violation of principles of natural justice as no prejudice was caused to the delinquent in cross examining the concerned officer."

7. The respondent has examined the Enquiry Officer Mr. T. Shreedhar through whom brought on record about explaining the enquiry proceedings to the Complainant and every opportunity was afforded to the Complainant to cross examine the management's witnesses. In the cross examination, the Respondent's witness T. Shreedhar has admitted the fact of not supplying copies of documents and list of witnesses alongwith the chargesheet to the Complainant. Further witness of the Respondent T. Shreedhar has admitted that the names of doctors are mentioned in the chargesheet but they have not examined. It has come in the evidence of the Respondent's witness T. Shreedhar that the dates of visits of the Complainant to the doctors are not mentioned in the chargesheet as well as the dates on which the Complainant came late. The fact also admitted by the Respondent's witness T. Shreedhar that the Complainant had requested the management by his reply dated 12th June 1994 to the show cause notice to supply copy of complaints, reports of doctors and state in support of show cause notice and allow him to represent by an advocate, but all his such requests was turned down. It is also admitted by the witness of the Respondent Mr. T. Shreedhar that the defence representative R. K. Saha was staying at Calcutta and the enquiry was conducted at Chennai. The request of the Complainant was not considered to fix the enquiry on 20th November 1999 so that his representative keep himself present, but this request was also not considered. Admission is also given by the Respondent's witness T. Shreedhar that there is no endorsement made on pages 01 to 29 of Exh. C-7 to show that on every date of enquiry proceeding was explained to the Complainant. It seems from evidence of the Respondent's witness T. Shreedhar that copies of documents were given to the Complainant on 30th October 1995 when the witness of the management was under cross examination. On the basis of the admission given by the Respondent's witness T. Shreedhar on every point, the learned Advocate for the Complainant has streneously argued that it cannot be said the enquiry initiated against the Complainant was legal, fair, proper and based on principles of natural justice.

8. The learned Advocate for the Complainant taking assistance of the ratio laid down in the cases decided by the Hon'ble Supreme Court and High Courts, to substantiate his argument as to how non supply of copies of documents, rejecting request of the Complainant to allow him to represent by an advocate, non examination of material evidence, place of enquiry is far away therefore unable to reach within reasonable time caused injustice and hardships to the delinquent who is unable to set out his defence and ultimately non compliance of such requirements resulting

the enquiry vitiated not in accordance with the principles of natural justice. The Learned Advocate for the Complainant has placed reliance on the case of Ministry of Finance and Anr. *V/s* S. B. Ramesh reported in 1998 I CLR 659 SC, where in held in para 13—

> "We are of the considered view that this is absolutely irregular and has prejudiced the case of the applicant. These documents, which were not proved in accordance with law should not have been received in evidence and that, any inference drawn from these documents is misplaced and opposed to law."

Further reliance is placed on the case of M/s. Sahney Kirkwpod Pvt. Ltd., *V/s* BG Kondkar and another reported in 1985 I CLR 314 Bombay, wherein held in Para 7—

> "We are therefore of the opinion that the finding of the Labour Court below that the enquiry was vitiated by the refusal of the enquiry officer to allow the Respondent to cross examine Sable, by the failure of the enquiry officer in calling Venugopal, who was a material witness and by the reliance upon the alleged admission of guilt is correct and needs no interference by the Court."

The Learned Advocate for the Complainant has concantrated much on the point of examination of material witnesses. According to him, doctors are the material witnesses on the basis of their statements charges were levelled against the Complainant and initiated enquiry and those witnesses should have been brought before the enquiry officer for their cross examination to find out the truth. Further reliance is place by the learned Advocate for the Complainant on the case of Ghatage Patil Transport Pvt. Ltd., *V/s* BK Etale and others reported in 1984 II LLJ 121 Bombay, wherein held in Para 6 —

> "In the matters of domestic enquiries, if the employee is refused a fair opportunity of putting forward his case *i.e.* his request for being represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect."

Further reliance is placed on the case of Anand G. Joshi *V/s* Maharashtra State Financial Corporation and others reported in 1991 I CLR 396 Bombay, wherein held in Para 10 —

> "It is immaterial whether the petitioner asked for time or not. What is material is whether the enquiry officer conducted himself in a manner required of him. Having regard to ratio of the decision, I have no hesitation in holding that the enquiry officer has not conducted himself fairly and properly."

On the basis of the ratio laid down in the above referred case, the Complainant is trying to show as to how the enquiry should be vitiated as his request to grant time and fix up as per convenience of the Complainant not considered by the enquiry officer. The Complainant is also taking help of the ratio laid down in the case of Hardwari Lal *V/s* State of U. P. and others reported in 2000 I CLR 73 SC, wherein held in Para 3 —

> "Before us the sole ground urged is as to the non observance of the principles of natural justice in not examining the Complainant Shri Virendra Singh and witness Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that non examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virendra Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accomanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or condition of the appellant. We do not think that the Tribunal on and High Court were justified in thinking that non examination of these two persons could not be material. In these circumstance, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

Thus, according to the Complainant, non examination of material witnesses caused great injustice and on this ground the enquiry should be vitiated. The cardinal principles of labour jurisprudence enjoing upon an employer to hold a domestic enquiry against a workman honestly and *bonafide* and with care and caution that such an enquiry does not become an empty formality.

Much stress has been given by the Complainant that material witness was kept back by the Respondent and the intention behind it is to withold and suppress the material facts coming on record through said witnesses, therefore, the Respondents did not act *bonafide*. Reliance is placed on the case of Kumar Ram Nandan *V/s* M/s. Fluid Powar (P.) Ltd. reporte in 1987 II CLR 269 Bombay wherein held in Para 7—

> "In withholding and suppressing this material evidence from coming on record, the first Respondent did not act *bonafide*."

The Learned Advocate for the Complainant has further placed reliance on the case of Bombay Gas Public Limited *V/s* Laxman Dhaku and others reported in 1997 I LLN 193 Bombay, wherein held in Para 8 —

> "After analysing the evidence on record, the Industrial Tribunal has come to the conclusion that there was non compliance with the provisions of the Standing Orders and natural justice, in that, instead of recording the statements of witnesses in the presence of the delinguent workman, the delinquent workmen were confronted with prerecorded statements during the domestic enquiry. In the circumstances, the Tribunal was of the view that the workmen did not have adequate opportunity of defending themselves. This again is a conclusion which is difficult to discharge with."

Reliance is also placed on the case of State of U. P. *V/s* Shatraghna Lal and another reported in 1998 II CLR 857 SC, and on the case of S. L. Kapoor *V/s* Jagmohan and others reported in AIR 1981 SC 136 wherein ratio laid down is that person against whom action is proposed to be taken has to be given an opportunity of hearing, and this opportunity has to be an effective opportunity, and not a mere pretence. The non observance of natural justice is itself prejudice to the right of workmen against whom domestic enquiry is initiated. Further reliance is placed by the learned advocate for the Complainant on the case of Union of India *V/s* Goel (H. C.) reported in 1964 I LLJ 98-SC, wherein held that —

> "It may be that the technical rules which govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials asm to disciplinary enquiries held under the statutory rules."

Taking support of the ratio laid down in the above case, the Learned Advocate for the Complainant has canvassed argument that no doubt rules for conducting disciplinary proceedings are not that much strict which are governed in the proceedings of the criminal trial, but that does not mean that while punishing the delinquent care should not be taken to see that innocent should not be punished.

9. While arguing on the point of power of the Court while adjudicating the finding of the enquiry officer and according to the Learned Advocate for the Complainant, the Industiral Court has power of appeal against findings of fact made by the enquiry officer and to support his argument is placing reliance on the case of General Employees Union *V/s* Ambassador Sky Chef and others reported in 1995 II CLR 427 Bombay wherein held in Para 13 —

"In the instant case, considering that evidence was being let in for the first time before the Labour Court, the Labour Court was fully clothed with the power under Sec. II-A to reappraise the quantum of punishment."

In short, according to the Complainant, the Industrial Court has clothed with power of reappreciation of evidence and interfere with the punishment imposed by the Respondent it being an appropriate case. The reliance is placed by the learned Advocate for the Complainant on the case of Delhi Cloth and General Mills Company Limited *V/s* Thejvir Singh reported in 1972 I LLJ 201 SC, wherein held —

> "The written request to postpone the enquiry for two or three days to enable him to contact his representative to represent him and also to bring his witnesses was rejected. To say the least, it is a very unreasonable attitude to be adopted by the enquiry officer."

The Learned Advocate for the Complainant is giving more stress on the ratio laid down in the above case and the reason behind will be to give reply to the Respondent to the attitude of the enquiry officer as to how he acted harsh while rejecting request of the Complainant to adjourn the enquiry because his representative was not available and fix the enquiry on suitable date. Further reliance is placed by the learned advocate for the Complainant on the case of Gope Laxmichand Badlani *V/s* Oriental Bank of Commerce New Delhi and others reported in 2002 III 206, Bombay wherein held—

"Domestic enquiry Oral evidence Right of employee to cross examine witnesses—No document can be relied upon against a party without giving him an opportunity of cross examining author thereof."

The grievance of the Complainant is that unless an opportunity afforded to cross examine witnesses (doctors) truth cannot come out. It seems from the facts and circumstances of the present complaint that the employer has put in motion initially because of Complaints of doctors and thereafter the Area Managers visited the doctors and seperate investigation was done, therefore, according to the Complainant, the statements of doctors and reports, if any, made by them are the necessary documents and to find out reality, the concerned doctors would have been the material witnesses and they should have been asked to remain present during enquiry for their cross examination. Failure on the part of the Respondent of not keeping the witnesses (doctors) during enquiry for their cross examination by the Complainant would amount to violation of the principles of natural justice. According to the Respondents, they have made an attempt to keep the material witnesses (doctors) present during enquiry, but the concerned doctors did not take any cognizance of the request of the Respondent. The Learned Advocate for the Respondents urged that the enquiry officer has no power to issue witness summons to the witnesses. In short, the Respondent trying to show that they have made attempts to keep the material witnesses (doctors) present in the enquiry for their cross examination by the Complainant, but failed in their attempt. The request for postponing the enquiry made by the Complainant was not considered by the enquiry officer on the day when the representative could not attend the enquiry because of his personal difficulty. The list of documents and list of witnesses were not supplied to the Complainant alongwith the chargesheet. The place of enquiry was fixed for away from residence of the representative. Therefore, the representative could not defend the interest of the Complainant properly in the enquiry. Having been considered the facts and circumstances, the enquiry officer ought to have complied with those points and failure on his part amounts to violation of the principles of natural justice while conducting the enquiry against the present Complainant. Therefore, I answer the issue No. (3) in affirmative and hold the enquiry against the Complainant was not fair and proper and based on the principles of natural justice. Hence, I pass following order :—

Order

The enquiry initiated against the Complainant is not fair and proper and based on the principles of natural justice.

The Respondent company may avail of an opportunity to prove misconduct before the Court.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 13th October 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 11th November 2003.

BEFORE SHRI P. B. SAWANT, MEMBER, INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

APPLICATION (MRTU) No. 25 OF 2000.—Bharatiya Kamgar Karmachari Mahasangh, 5, Navalkar Lane, Dr. Mane Sabhagriha, Near Prathana Samaj, Mumbai 400 004.—*Applicant.*—*Versus*—Maharashtra State Financial Corporation, New Excelsior Building, 7th and 9th Floor, A. K. Nayak Marg, Mumbai 400 001.—*Non- Applicant.*

In the matter of Application for Recognition u/s. 11 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.—Shri P. B. Sawant, Member.

Appearances.—Shri S. A. Sawant, Ld. Advocate for the Applicant.
Smt. N. R. Patankar, Ld. Advocate for the Non-Applicant.

ORAL JUDGMENT

(Dated the 13th November 2003)

Bharatiya Kamgar Karmachari Mahasangh (hereinafter, called, 'the Applicant') has filed the present Application u/s. 11 of the M.R.T.U. and P.U.L.P. Act, seeking a recognition as a recognised Union in the establishment of Maharashtra State Financial Corporation, (hereinafter, called the 'Non-Applicant establishment').

2. Facts which give rise to the present Application can be stated in nut-shall as below :—

The Applicant is a Union registered under the Trade Unions Act. They have elected the office bearers for the year 2000-2001 in August, 2000. The ratio of membership in the establishment from June, 2000 till November, 2000 is 86.44%. The Applicant has annexed a list of employees to the Main Application affirming the percentage of employees who are the members of the Applicant.

3. In a meeting dated 30th November 2000, it was resolved to apply for registration for the Non-Applicant establishment. The Non-Applicant establishment is engaged in giving financial loans, assistance to the industrial units. The Applicant asserts that it has not instigated, aided or assisted the commencement or continuation of strike among the employees. The Applicant has given the details of the executive meetings held in last 12 months and has chosen to produce the minute-books of the meetings, etc. Besides, it is affirmed that the regular accounts were being maintained and audited. It is therefore, prayed that the recognition may be awarded to the Applicant.

4. Pursuant to these contentions, notice was issued to the Non-Applicant establishment. It has appeared and filed its say *vide* Exh. C-3, contending *interalia* that the Applicant is the only Union representing the employees of the Corporation. It is pointed out that the Applicant has shown the employees working in Divisional and branch offices of the Corporation, which are spread all over in the State of Maharashtra. However, the branch offices and the Head Office are not 'One Undertaking' u/s. 3(*15*) of the M.R.T.U. and P.U.L.P. Act, nor there is any notification issued by the Government of Maharashtra to that effect. The Government of Maharashtra by letter dated 16th June, 1993 has turned down the request of the Union known as Maharashtra Sharmik Sena for declaring all of the Offices of the Undertaking as 'One Undertaking' u/s. 3(*15*) of the M.R.T.U. and P.U.L.P. Act.

5. It is the first and foremost contention that the strength of employees spread all over the branches and Head Office cannot be taken into consideration for deciding the membership of the Applicant Union for the purpose of present Application. Besides, out of the list annexed to the Application, 61 of the employees are working with the Corporation as Assistant Managers in Administrative, Managerial and Supervisory capacity and are not employed in the technical, operational and clearical grade as well as they are drawing salary exceeding Rs. 1600 per mensum. Some of the employees are ceased to be in the employment of the Corporation on account of their resignation. Some of them have expired. The employees remaining are drawing more than Rs. 1600 p.m. and therefore these employees are not 'workman' within the meaning of Sec. 2(*s*) of the I. D. Act. It is further pointed out that the Undertaking was never granting any financial aid by the Government of Maharashtra through the finance department. It is denied that the Undertaking

is managed by the Managing Director. Ultimately, it is submitted that if the Court feels that the Applicant has satisfied all the pre-requisite conditions, the Court may grant recognition to the Applicant in respect of Corporation's Head Office Building at New Excelsior, Mumbai-1 and ultimately prayed that with all these reasons the Court my be pleased to dismiss the Application with cost.

6. On perusal of the Application, Affidavit, Annexures to the pleadings of both the parties, following points arise for my determination and my findings thereon, for the reasons given below therein, are as follows :—

Points.—	Findings.—
(1) Does the Applicant prove that the Head Office and Branch Offices spread all over is forming 'one Undertaking' within the meaning of Sec. 3(15) of the M.R.T.U. and P.U.L.P. Act ?	No,
(2) Whether the Applicant can be registered as a recognised Union so far as the Respondent's establishment at New Excelsior Bldg., 7th & 9th floor, Mumbai-400 001 ?	Yes,
(3) What is the order ?	Please, see final order.

Reasons

7. *Point No. 1.*—The wording used by the Statute while drafting, full concentration has been given to the word "Undertaking" and therefore it is necessary to reproduce the said definition as below :—

> "Any Union which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent of the total number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking."

Therefore, more concentration needs to be on the membership of the employees working in the particular Undertaking and also on the point that recognition of the Union is for and to the said Undertaking. It precisely expresses that the recognition of Union for an Undertaking is connected with the membership of the employees for a specifed percentage in the Undertaking.

8. The word "Undertaking" has been described u/s. 3(*15*), which lays down that.—

> "Undertaking for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter."

Chapter III under the Act deals with recognition of Unions. The legislature has made it clear the object of the scheme for recognition of Unions framed under the Act, is to avoid the mushtroom growth of Unions and to secure industrial peace. The provision has been therefore made that in one Undertaking there shall not be more than one recognised Union.

9. Pursuant to this legal provisions, the fact-matrix on record has been put up before the Court is the list of office-bearers under Annex. 'A' for the year 2000-2001. The said list is as long as of 39 members. Thereafter the list of members of Mahasangh in M. S. F. C. is produced on record at Annex. 'B'. It comprises the names of 510 persons. Annex. 'C' is a Certificate of Chartered Accountant alongwith the other details. Annex. 'E' is the registeration certificate. Annex. 'G' is a copy of the Constitution and Rules. Relying on these documents, the Applicant has submitted that the recognition has to be awarded so far as the Respondent establishment is concerned.

10. At this juncture, Ld. Advocate Smt. Patankar has pointed out that the Undertaking of Maharashtra State Financial Corporation is spread in Head-Office and Branch Offices at several places. The total complement, as given by the Applicant is inclusive of the employees working at the Head-Office and at the branch-offices. In pursuance of this contention, it is vehemently submitted that the recognition to the Applicant Union cannot be granted in a straight-jacket formula, covering all the branch offices and the Head-Office. Upon hearing elaborately both the sides, it is transpired that there is some substance in the submissions of Ld. Advocate Smt. Patankar because the Undertaking, as specified under Chap. III of the M.R.T.U. and P.U.L.P. Act, has a relevance to the point of grant of recognition for a particular Undertaking is concerned. Therefore, if an establishment having several branches and Head-Office at a particular place, in that case, the Undertaking is at various places *i.e.* of Head-Office and the branch offices distinctly. Pursuant to this fact, it is the duty of the Applicant while seeking recognition U/s. 11 to establish that it has a majority of employees in that particular set of office or Undertaking. It is also necessary to assert to the proviso clause (2) to sub-section (*15*) to Sec. 3 that in the absence of a notification of the Government for treating these branch offices also as 'One Undertaking' alongwith the Head-office, those are to be treated as distinct from each other. In other words, the Head-Office and the Branch Offices no longer being declared by the notification as one and the same unit or failling under one undertaking, merely on the assumptions of the Applicant Union that it has a majority of membership and that a recognition as a whole to be awarded to the Applicant Union so far as the Non-Applicant is concerned, cannot be upheld.

11. In the light of the above contentions, the entire record was sent for verification to the Investigating Officer, who has filed his report *vide* Exh. O-3. The Investigating Officer has verified the Registration Certificate, Admission fee, subscription fee registers, membership registers, minute-books of the meetings, record of A. G. M. and found that the Applicant has complied with the provisions of Sec. 19 of the M.R.T.U. and P.U.L.P. Act. He has found that out of the list of 510 employees, 453 employees were not considered as valid members as they were not found in the Company's list. Only 57 employees are treated as valid out of 60. It is observed that if the discrepancies are condoned, the percentage of valid membership comes to 95.

12. I have referred to the list of employees submitted by Smt. Patankar, numbering about 60. These 60 persons are spread in various categories like Junior Officers, Assistants, Search Assistants, Telephone Operators, Steno, Clerk, Typist, Driver, Naik, Sweeper. The subsequent list produced on record of 510 employees is of the entire offices of the Corporation inclusive of the branch offices. Therefore, the list of the employees at the Head-office has been compared with the subsequent list referring to the serial numbers of these employees and in that search, it is transpired that all the 60 persons were in actual work with the Corporation at its Head-Office. Pursuant to this fact, it is clear that the employees of the Head-Office who are the members of the Applicant Union, are 57 in number and their percentage is more than 30% *i.e.* upto 95%. In the light of these facts, admittedly the Applicant Union has a membership of the employees in the Head-Office to the extent of 95%.

13. In pursuance of the above fact, by Application Exh. U-5, the Applicant Union has submitted in para 4 that by purshis dated 23rd August 2002 it has submitted to grant the recognition to the extent of the Undertaking at New Excelsior Building only. Pursuant to this submission, I refer to the said purshis simultaneously para 12 in the Written Statement filed by and on behalf of the Respondents. It contends that if the Union fulfills the requirement under the provisions of the Act for granting recognition, the Court may pass order and grant recognition to the Applicant Union in respect of the Corporation's Head-Office at New Excelsior Building, Mumbai 400 001. At the outset, it has to be borne in mind that though the Applicant has sought for the recognition, so far as the entire Undertaking is concerned, now the Applicant appears to have restricted the same to the extent of Head-Office only having reference to the 60 employees is concerned. In pursuance of that, contention of the Non-Applicant that there are Managers and others who are drawing more

than Rs. 1600 p.m. is also to be taken into consideration. In my opinion, the Investigating Officer has nowhere referred to the said aspect. Secondly the Constitution of the Union, if read, it will indicate in Rule 2 under the head of "Objects" that—

" 2A) The objects of the Union shall be (a) To organise and unite the persons employed in the industries mentioned in Annexure 'A' in the State of Maharashtra and to regulate their relations with their employer ".

The Rule doesn't specify the word " persons " because it is clear that by knowing it full well the real purport of the word " Person ", the said word has been used instead of an " employee ". Rule 3 deals with admission of ordinary member and also use the words "any person employed in the industries ....." and does not specify on any other aspect. The nomenclature of the posts which the employees at the Head-Office are holding has been given alphabetically *vide* Annex. 'A' to the Written Statement. The membership receipt books, membership registers, minutes books of executive committee, etc. documents are silent so far as the variance in the contention of the Applicant about the concerned persons becoming an employee or not an employee or even on the point of having object of the Union to make only the employees as members, etc.

14. Pursuant to above, the Applicant has given the address of the Non-Applicant as New Excelsior Building and not of any other place/s. Therefore, I found that the Maharashtra State Financial Corporation at New Excelsior Building is an 'Undertaking' within the meaning of Sec. 3(*15*) of the Act and that the Applicant can isolatedly claim the registration as a recognised union so far as that Undertaking is concerned.

15. *Point No. 2.*—Pursuant to the requirement, as envisaged under the Act, I have found that the Applicant has filed the documents like the list of office-bearers, certificate from the chartered Accountant having examined accounts of the Union. The Constitution is also on record. The total computation of the percentage of membership is also filed on record. The Receipt Books, Registration Certificate are produced. The Cash Book of the Union from 1st January 2000 to 30th June 2000 is also on record. On perusal of all these documents and on perusal of the six monthly tabular information pertaining to the membership and the percentage of membership available with the Applicant Union, I have found that since there is no other Union in operation so far as the Undertaking at New Excelsior Building is concerned, the Applicant having a majority of membership with it and being a sole Union working with the Maharashtra State Financial Corporation, I have found that the Applicant has complied with the requirement within the meaning of Sec. 11 and thereby I hold my finding accordingly and pass the following order :—

Order

(*i*) Application is allowed.

(*ii*) Applicant Bhartiya Kamgar Karmachari Mahasangh be registered as a recognised Union for the Undertaking of Maharashtra State Financial Corporation, New Excelsior Building, 7th and 9th floor, A. K. Nayak Marg, Mumbai-400 001.

(*iii*) Office to issue necessary Certificate.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 13th November 2003.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated 21st November 2003.

IN THE INDUSTRIAL COURT, AT MUMBAI

COMPLAINTS (UPL) No. 290 of 1998 and 669/1998.—Dugdhashala Kamgar Sanghatana, 18/80, BDD Chawl, NM Joshi Marg, Mumbai 400 013.—*Complainants in both Complaints No. 290 & 669/98.* —*Versus*— (1) The General Manager, Greater Bombay Milk Scheme, Worli Dairy, Mumbai 400 018. (2) The Dairy Development Commissioner, Maharashtra State, Worli Dairy Campus, Mumbai 400 018. (3) The Chief Executive Officer, Aarey Milk Colony, Goregaon East, Mumbai 400 069.—*Respondents in both complaints No. 290 & 669/98.*

In the matter of complaint of unfair labour practices under 5, 6 and 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act, 1947.

Present— Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances—Mr. R. V. Sankpal, Advocate for the Complainants.

Mr. A. H. Jadhav, Advocate for the Respondents.

COMMON JUDGEMENT AND ORDER

(Dated the 3rd December 2003)

Complainant Dugdhashala Kamgar Sanghatana has filed 2 separate complaints *Viz.* Complaint (ULP) No. 290/1998 and 669/1998 for its member employees working with the Respondents making grievance that the Respondents engaged in unfair labour practices covered under items 5, 6 and 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act by not making the concerned employees permanency. Except the employees mentioned in the list filed with the complaints, the parties to the complaints and controversy involved therein are identical therefore both complaints are disposed of by this common judgement and order.

2. Facts in brief of Complaints are as under Complainant Dugdhashala Kamgar Sanghatana is a registered union under the Trade Unions Act having membership amongst the workmen employed under the Greater Bombay Milk Scheme and working at Worli dairy and Kurla dairy. Respondent No. 1 is General Manager, Greater Bombay Milk Scheme and Respondents Nos. 2 and 3 is Dairy Development Commissioner, Maharashtra State and Chief Executive Officer, Aarey Milk Colony, Goregaon respectively, Complaint (ULP) No. 290/1998 is filed for permanency of 50 employees mentioned in annexure-A to said complaint and Complaint (ULP) No. 669/1998 is filed for 59 employees shown in annexure-A. Complainants are working continuously since more than 4 to 6 years in the establishment of Respondents continuously and without any interruption. The establishments of Respondents are at Worli, Kurla and Aarey under Greater Bombay Milk Scheme, Complainants are performing the duties of permanent nature. Complainants have completed 240 days continuous service. The Respondents have kept the Complainants as daily rated workmen though they have completed 240 days continuous service. Juniors to the Complainants have made permanent earlier therefore they have lost their seniority.

3. The employees working with Respondent No. 1 filed separate complaint (ULP) No. 1241 of 1993 which is decided on 30th September 1994 and Complaint (ULP) No. 34/1995 and both the Complainants have been decided by Industrial Court granting the relief of permanency from the date they have Completed 240 days, therefore, concerned employees in both Complaints should also be treated at par by granting permanency from the date of completion of 240 days continuous service, hence filed Complaints.

4. The Respondents have filed their written statements in both Complaints wherein raising preliminary objection to the maintainability of Complaints on the ground of mis-joinder and non-joinder of necessary party, complaints are barred by law of limitation, Complainant union is not a recognised union and has no representative character. Therefore cannot file Complaints. It is contended by Respondents that there is no cause of action shown by Respondents No. 2, therefore, he is not a necessary party. The activities of Respondents No. 1 and 2 are managed by Government of Maharashtra, therefore, Government of Maharashtra is a necessary party. Complaints are not

filed within 90 days from the date of alleged unfair labour practice, hence it is barred by law of limitation. It is contended by Respondents in their written statement that they have no knowledge of alleged membership of employees working with Respondents. According to Respondents, employees are made permanent in accordance with sanction from Government of Maharashtra and as per availability of vacancy of permanent post. It is denied by Respondents that member employees are entitled for permanency from the date they complete 240 days continuous service. Further contended by Respondents that the employees have been made permanent as per seniority list and as and when vacancies were available for permanent posts. It is denied by Respondents they are engaged in any unfair labour practices, as alleged against them.

4. According to Respondents, facts of Complaint (ULP) Nos. 1241/1993 and 34/1995 are totally different therefore, concerned employees cannot take advantage of the decision in said Complaints.

5. Heard the Learned Advocates for Complainants and Respondents.

6. My Learned predecessor was pleased to frame following issues to which I have noted my findings :—

Issues	*Findings*
(1) Whether Complainants have proved that Respondents have committed unfair labour practices under items 5, 6 and 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act 1971 ?	Yes.
(2) whether Complainant union is entitled to get any reliefs as claimed in this complaint ?	Yes.
(3) What orders ?	Complaints are allowed.

Reasons

7. At the outsent, there is no dispute about employment of concerned employees from the dates shown in Annexures-A attached to complaints. The controversies involved in complaints are only in respect of making concerned employees permanent and extending benefits of permanency from the date they completed 240 days continuous service. According to Respondents concerned employees have been made permanent as per seniority list and as and when vacancies were available for permanent posts. Complainant union has came with the grievance that Respondents have made permanent the junior employees earlier to the date of granting permanency to concerned employees in the present complaints and by this shown favour to same junior employees, which amounts to unfair labour practice under item 5 of Sch. IV of M. R. T. U. & P. U. L. P. Act.

8. An application Exh. U-5 was moved by Complainant in Complaint (ULP) No. 669/1998 requesting thereby to club Complaint (ULP) No. 290/1998 and 669/1998 to which Respondents have no objection and after having been heard the parties, such application was allowed by order dated 28th August 2003. Therefore, as per request of parties, oral and documentary evidence of Complaint (ULP) No. 290/1998 is made applicable for Complaint (ULP) No. 669/1998.

9. Complainant union has examined Mr. Prakash Kamble, a General Secretary, who made a statement on oath that all employees mentioned in Annexures-A attached to complaints are members of their union, Witness Kamble has further stated about Complaint (ULP) No. 1241/1993 which was filed before Industrial Court, Mumbai for permanency and the relief of permanency was granted to concerned employees from the date they have completed 240 days continuous service, in the employment of Respondents. This witness has admitted in his cross-examination that no dates have been mentioned regarding completion of 240 days continuous service by each of concerned employees Witness Kamble has further admitted that all employees concerned have been made permanent and they are getting benefits of permanency. Respondents have examined Witness Mr. Deepak Magare. who has admitted in his evidence that all employees mentioned in Annexure-A are working in Greater Bombay Milk Scheme and the dates of permanency mentioned

in Annexure-A against name of concerned employees are correct. It has come in the evidence of Mr. Magare that Respondent No. 1 has issued orders of permanency in favour of employees concerned on the basis of vacancies available. In cross-examination, Witness Magare has made a bold statement that irrespective of 240 days or more continuous service rendered by concerned employees, benefit of permanency could not be given because vacancies were not available. Thus, it is clear that benefit of permanency given to concerned employees on the basis of vacancies available. Witness Magare has shown ignorance of filing Complaints (ULP) No. 1241/1993 and 34/1995 and the relief granted in said Complaints. Xerox copy of certified order dated 30th September 1994 passed in Complaint (ULP) No. 1241/1996 by Member, Industrial Court, Mumbai is placed on record and on the basis of said document, Complainant union is trying to show as to how concerned employees in both complaints are deprived from getting benefit of permanency. Xerox copy of the order passed in Complaint (ULP) No. 1241/1993 is placed on record after closing oral evidence and on the day of arguments. From the said order, it is clear that Respondents are directed to give status, benefits and privileges of permanent employees from the date they have completed continuous service of 240 days together with consequential benefits thereof. Therefore, concerned employees are taking help of the decision of Complaint (ULP) No. 1241/1993 and requesting the Court that they be made permanent from the date of completion of 240 days and extend the benefits of permanency.

10. Respondents have not challenged the status of concerned employees and rendering the services continuously as per provisions of clause 4(*c*) of model standing orders, employees completing 240 days continuous service entitled for permanency. The stand taken by Respondents that concerned employees have not been made permanent from the date of completion of 240 days continuous service because of non-availability of permanent post cannot be considered because such right is not vested with employers. On the contrary, the employer has to comply strictly the provisions of the model standing orders. If the juniors are made permanent earlier and getting more salary than the senior employees, it is purely a desparity in the establishment. Breach of provisions of model standing orders of service conditions amounts to failure to implement agreement between the parties. Having been considered the oral and documentary evidence, complainant union has proved that the Respondents engaged in unfair labour practices covered under items 5, 6 and 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act by treating complainants temporary years together and extending benefit of permanency from the date permanent posts were available. Complainant union has succeeded in establishing of having substance in their grievance, therefore both complaints deserve to be allowed as per orders passed below.

Order

(1) Complaints (ULP) Nos. 290/1998 and 669/1998 are hereby allowed.

(2) It is hereby declared that Respondents Nos. 1 to 3 have engaged in unfair labour practices covered under items 5, 6 and 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act and they are directed to cease and desist from engaging in such unfair labour practice.

(3) Respondents are hereby directed to give status, benefits and privileges of permanency to concerned employees mentioned in Annexures-A attached with complaints from the date each of them has completed 240 days continuous service together with consequential benefits thereof.

(4) No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 3rd December 2003.

K. G. SATHE,
Registrar,
Industrial Court Mumbai,
dated the 6th December 2003.

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINTS (ULP) No. 605 of 1998.—Shri Bhupendra D. Maniar, A/5, Arihant Building, Chakaravarthi Ashok Road, Near Pamedarwadi, Shantinagar, Kandivali (East), Mumbai 400 101.—*Complainant.*—*Versus*— (1) M/s. Chandulal Chunilal & Company, 125, Stock Exchange, Plaza, 1st Floor, Dalal Street, Fort, Mumbai 400 023, (2) M/s. KJS Securities Pvt. Ltd., 60, Juhu Supreme Shopping Centre, Gulmohor Cross Road No. 09, JVPD Scheme, Mumbai 400 049, (3) M/s. Bombay Stock Exchange, 25th Floor, Dalal Street, Fort, Mumbai 400 023.—*Respondents.*

In the matter of complaint of unfair labour practices under item 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act, 1971.

Present— Shri P. P. Patil, Member, Industrial Court, Mumbai.

Appearances—Shri Sunil Patil, Advocate for the Complainant.

Smt. Sharmila Deshmukh for the Respondents No. 1
No appearance on behalf of Respondents Nos. 2 and 3.

Judgement and Order

(Dated the 29th November 2003)

1. This complaint is under Sec. 28 read with item 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act, 1971. Complainant Bhupendra D. Maniar is claiming Respondents engaged in unfair labour practice covered under item 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act by intending to transfer the membership of Respondent No. 1 in favour of Respondent No. 2.

2. Facts in brief of complaint are as follows. Respondent No. 1 is the Share and Stock Broker of Respondent No. 3. Respondent No. 3 is the Stock Exchange having more than 600 members for their activities in stock exchange. Complainant is working with Respondent No. 1 since July, 1980 as an Accountant (Clerk). On 15th April 1996 Respondent No. 1 orally terminated the services of the Complainant without following due process of law. Therefore, the Complainant approached Government Labour Officer for intervention in the dispute of his illegal termination. Respondent No. 1 did not Respond to the Conciliation Officer and after recording failure report, the Conciliation Officer referred the dispute for adjudication and said dispute *i.e.* Reference (IDA) No. 205 of 1998 is pending before XIth Labour Court, Mumbai.

3. Respondent No. 3 displayed notice on the notice board stating therein that the membership right of Respondent No. 1 proposed to be transferred in favour of Respondent No. 2. Complainant approached Respondent No. 3 by his letter dated 6th April 1998 and objected the transfer of right of membership of Respondent No. 1. Respondent No. 3 did not consider said request of the Complainant. After the right of transfer of membership of Respondent No. 1 in favour of Respondent No. 2 has been completed, the Complainant will less right of his employment and the reference pending before Labour Court. The action of Respondent No. 1 amounts to unfair labour practice covered under item 9 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, hence this complaint.

4. Respondent No. 1 filed its written statement at Exh. C-6. Respondents Nos. 2 and 3 have not filed their written statements. It is contended by Respondent No. 1 in the written statement that the present complaint became infructuous because the right of membership of Respondent No. 1 has already been transferred to Respondent No. 2 in May, 1998. Further contended by Respondent No. 1 that the Complainant was in their employment as Clerk from 1982 till March, 1993. In the month of March, 1993 the Complainant was injured in the Bomb Blast, therefore, had extended monetary help to the Complainant for medical treatment. The right eye of Complainant was totally damaged and there was serious injury to his left eye, therefore, the Complainant was absent from duty because he was not in a position to carry out the work. But on humanetarian ground the Complainant was continued in employment and paid him full salary.

5. It is further contended by Respondent No. 1 that on account of continuous loss, in April, 1986 it took a decision to close its business activities and decided to sell its membership right. Accordingly, a notice of decision was placed on the notice board of the office premises and offered to pay full legal dues comprising of retrenchment compensation, gratuity, leave wages, etc. in full and final settlement. Complainant was also offered to take his legal dues as agreed by other employees. Instead of accepting the legal dues, the Complainant raised an industrial dispute before the Conciliation Officer, office of the Commissioner of Labour, Mumbai, for his reinstatement with back wages. During pendency of conciliation proceedings, Complainant sent a letter dated 9th August, 1996 to Respondent No. 1 and thereby demanded gratuity, wage increase, medical expenses etc. Again, by letter dated 2nd September 1996 Complainant made a demand for sum of Rs.18,30,600 towards retrenchment compensation and medical expenses. In fact, Respondent No. 1 received letter dated 3rd January 1997 from Share Bazar Staff Union informing a sum of Rs. 2,68,972 was due and payable by Respondent No. 1 towards legal dues of Complainant. Persuant to said letter, meetings were held between the office bearers of the union and the representatives of Bombay Stock Exchange Forum but the Complainant intentionally refused to arrive at any settlement.

6. Respondent No. 1 after closure of its business had negotiated for transfer of his membership right in favour of Respondent No. 2 and accordingly Bombay Stock Exchange put up a notice. Complainant raised an objection for transferring the membership right. There is no question of reinstating the complainants because Respondent No. 1 has closed its business and legal dues are paid to its employees. Complainant has made exhorbitant demand. Complainant has no right to object the transfer of right, therefore, the present complaint is liable to be dismissed.

7. Following issues are framed to which I have noted my findings.

Issues	*Findings*
(1) Whether the Complainants has proved that the Respondent engaged in unfair labour practice covered under item 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act by displaying the notice dated 25th March 1998 on the notice board informing that the membership right of Respondent No. 1 proposed to be transferred in favour of Respondent No. 2 ?	No.
(2) Whether the Complainant has proved that the notice dated 25th March 1998 is illegal, therefore, liable to be quashed and set aside ?	No.
(3) What orders ?	Complaint is dismissed.

Reasons

8. At the outsent, there is no dispute regarding the action of termination of services of Complainant is under challenge in Reference pending before XIth Labour Court, Mumbai bearing Reference (IDA) No. 205 of 1998 in which sight relief of reinstatement with continuity of service and back wages. The present Complaint is far relief to restrain the Respondent No. 1 from transferring its membership right in favour of Respondent No. 2. According to Complainant, if the action of Respondent No. 1 of transfer of his membership right is completed, he will suffer financial loss.

9. It appears from the documents and evidence that Respondent No. 1 has deposited rupees five lacs with Respondent No. 3 as per the rules of Bombay Stock Exchange. But this amount was not deposited towards Compensation, gratuity etc. to the Complainant. In persuance of the order passed by my learned predecessor on 23rd April 2003 below application Exh. U-7, an application Exh. U-8 was filed by Complainant to allow him to withdraw provident fund amount of Rs. 1,41,304 which is deposited by Respondent No. 3 as per direction of the Court under order dated

23rd April 2003. The order was passed below application Exh. U-8 on 11th August 2003 and thereby allowed the Complainant to withdraw the said amount of provident fund, subject to furnishing bank guarantee of Rs. 1,50,000. But the Complainant failed to furnish bank guarantee and was requesting by application Exh. U-11 for notification of the order dated 11th August 2003 and said request was turned down.

9. The limited dispute raised by Complainant in the present complaint as to whether the Respondent No. 1 has right to transfer his membership right to Respondent No. 2. According to Respondent No. 1, he has already been transferred his membership right in favour of Respondent No. 2 under the by laws of Bombay stock Exchange in the month of May, 1998, the Complaint becomes infructuosus. Learned advocate for Respondent No. 1 during course of his arguments submitted that thus question of transfer of membership is not a subject matter of M. R. T. U. & P. U. L. P. Act. Learned Advocate for Respondent has made it clear in the course of his argument about amount of rupees five lacs deposited by Respondent No. 1 to Respondent No. 3 does not constitute legal dues of Complainant and it is merely a deposit with Respondent No. 3. According to Respondents, there is no relationship of employer and employee between the present Complainant and Respondents Nos. 2 and 3, therefore, Complainant cannot raise an dispute under the M. R. T. U. & P. U. L. P. Act against the Respondents Nos. 2 and 3. There is no dispute about transfer of membership right of Respondent No. 1 to Respondent No. 2 in the year 1998 and Reference (IDA) No. 205 of 1998 is pending before XIth labour Court, Mumbai under which action of Respondent No. 1 of termination of service of Complainant is under challenge. The Complainant has examined himself and admitted the fact of transfer of membership of Respondent No. 1 in 1998. Further, Complainant has admitted the contents of letter Exh. U-15 sent to Respondent No. 3 giving information about his legal dues. Respondent No. 1 has examined Mr. Rakesh Maniyar through when admitted the continuous employment of Complainant from 1981 till April, 1996. The fact of closure of business of Respondent No. 1 also brought on record through this witness. Witness of Respondents has admitted that no notice of closure was given to the workmen and according to him, after certain clarification Respondent No. 1 was ready to pay the amount suggested by the union and after clarification amounts towards provident fund and earned wages not entitled the complainant from Respondent No. 1 and after deducting this amount, Respondent No. 1 is ready to pay the legal dues of Complainant.

10. It is clear from the evidence that the action of transfering membership right of Respondent No. 1 to Respondent No. 2 has already been effected. The termination of service of Complainant is the subject matter of Reference (IDA) No. 205 of 1998 pending before XIth Labour Court, Mumbai. Once the action of transfer of membership right has been completed, there is no propriety to call back Respondent No. 1 not to transfer membership right to Respondent No. 2 Complainant has failed to prove his grievances of engaging the Respondents in unfair labour practice covered by items 9 of Sch. IV of M. R. T. U. & P. U. L. P. Act by transferering membership right of Respondent No. 1. To Respondent No. 2. In this view of the matter, the complaint deserves to be dismissed as per order passed below :—

Order

Complaints (ULP) No. 605 of 1998 is hereby dismissed. No order as to costs.

P. P. PATIL,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 29th November 2003.

K. G. SATHE,
Registrar,
Industrial Court Mumbai.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHREE P. K. CHAVARE, PRESIDENT

COMPLAINT (ULP) No. 504 of 1995.—Shri Mohmmad Iqbal Noor Mohd. Khan, 94/96, Zakaria Masjid Street, R. No. 13, 3rd Floor, Dongri, Bombay 400 009, (2) Shri Namdeo R. Karande, Shri Suryakund Mahopurush Co-op. Society, A Wing, 28 Gunpowder Road, Mazgaon, Bombay 400 010, (3) Shri Shivaji Rao Bhandare, Corporation Bldg., 19/2, D'Lima Street, Mazgaon, Bombay 400 010.—*Complainants.* —*Versus*— (1) M/s. Scindia Workshop Ltd., Dockyard Road, Mazgaon, Bombay 400 010, (2) Captain Khare, Director, Scindia Workshop Ltd., Scindia House, ballard Estate, Bombay 400 038, (3) Shri Ram Kishanchand Samtani, Assistant Manager (Personnel & Est. Dept.) Sciendia Workshop Ltd., Dockyard Road, Mazgaon, Bombay 400 010.—*Respondents.*

CORAM.— Shri P. K. Chavare, President.

Appearances.—Shri P. M. Mokashi, Advocate for the Complainants;

Shri R. N. Shah, Advocate for the *Respondents.*

JUDGEMENT

1. This is a Complaint filed by the 3 employees under Section 28(1) read with item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter for the sake of bravity referred to as the "Act").

2. The facts which are not seriously in dispute are as under. Scindia Steem Navigation Company Ltd. Is the Company duly constituted under the Companies Act. The Respondent No. 1 M/s. Scindia workshop Ltd., Dockyard Road, Mumbai is the 100% subcidiary of the said company. The Respondent No. 2 is the Director of the Respondent No. 1. The Respondent No. 3 is the company Secretary of the Respondent No. 1 company. The Respondent No. 4 is the Assistent Manager (Personnel & Establishment Department) of the Respondent No. 1.

3. On the allegation that the 3 workmen assaulted one Shri V. K. Aranso, a chargeman chargeman in the Winding Section, a criminal case was filed in the Court of Metropolitan Magistrate, 13th Court at Dadar. On 7th October 1985, the said case ended in conviction and each of the 3 Complainants were sentenced to imprisonment till rising of the Court and to pay fine of Rs. 250. The Complainants being the employees of the Respondent No. 1, were chargesheeted and after regular domestic enquiry, the charges were established and they were dismissed from service on 26th February 1986.

4. The 3 Complainants challenged the dismissal by filing 3 separate references bearing Nos. 48 of 1987, 49/1987 and 51 of 1987 on 26th February 1986. The said references were filed under the provisions of the Industrial Disputes Act, 1947. The learned Judge of the 7th Labour Court, Mumbai passed three seperate awards in the said references on 26th September 1994. By the said awards the 3 Complainants were directed to be reinstated with full back wages since the date of dismissal *i.e.* 26th February 1986. The awards were duly published on 17th December 1994 and thereafter, the 3 Complainants were reinstated in service on 13th January 1995.

5. The Government of India took over the control of Scindia Steam Navigation Company on 4th August 1987. Right from 1987, because of the international recession, the business of ship repairs was going down resulting in heavy losses to the Respondent No. 1 company. The result was that it could not pay the salary to the workmen since February, 1988.

6. The neighbouring Industrial Unit M/s. Mazgaon Doct Ltd. showed interest in taking over the Respondent No. 1 company and negotiations were held. There were some 700 employees working in the Respondent No. 1 company in those days. The company declared a voluntary Retirement Schene (hereinafter for short referred to as 'V. R. S.") and most of the employees opted for it and bid a shake hand with the company.

7. On 25th May 1988, the Government of Maharashtra issued a Notification under Section 4 of the Land Acquisition Act, 1984 and by issuing a declaration under Section 6 of the said Act on 25th May 1988, the premises of the Respondent No. 1 workshop were acquired by the State Government for expension of Mazgaon Dock Ltd. for defence purpose.

8. The Respondent No. 1 applied for permission to close down the establishment under the provisions of Section 25(0) of the Industrial Disputes Act but the prayer of the Respondent was turned down on 21st September 1989. There after the Respondent No. 1 applied for lay-off under Section 25(M) of the Industrial Disputes Act but the said prayer was also rejected. The strength of

the workers fell to less than 100 and then no permission to close down was required. Therefore, the Writ Petition which was filed in the High Court against the Government decision rejecting the permission for closure came to be withdrawn. The employees of the Respondent No. 1 company fell in two categories (1) Monthly rated employees, (2) daily rated employees. The monthly rated employees initially were the members of transport and Dock Workers Union headed by Shri S. R. Kulkarni. It was a recognised union. Some time in August 1983 barring few office bearers, all the workers of the Respondent No. 1 joined Association of Engineering Workers headed by Dr. Datta Samant.

9. Because the campion was under going financial crunch and the employees were facing the hardship. Association of Engineering workers had filed a Complaint bearing No. 354 of 1990 in the Industrial Court. Mumbai. Similar complaint was filed by Scindia Employees Union. As and when funds were available, the payment of wages were made to the workmen in bits. In the end, a proposal was submitted to the government of India by the union on 13th April 1998 to tell that the workers would be happy if 31st March, 1995 is treated as cut-off date and all the benefits are given to them till that day.

10. In the said proposal that was submitted on 13th April, 1998, financial effects were calculated including the wages that were to be paid to the 3 Complainants. The Government of India provided Rs. 3.5 crores by way of loan to the parent company *i.e.* Scindia Steam Nevigation Company, who in turn transferred that money to the Respondent No. 1 and thereafter the Respondent No. 1 signed a settlement with Scindia Employees Union and similar individual settlements also were signed with 36 other employees. There were 47 staff members of the Scindia Employees Union and out of these 47 staff members, 46 accepted the retirement benefits end left the company. Out of the 46 employees who were daily rated employees, 36 accepted the individual settlement. Thus eventually, the complaint bearing No. 354 of 1990 and complaint that was filed by Scindia Employees union were dismissed for want of prosecution.

11. Because there was no busines of repairs in the ships, the activities of the company had come to stand still some time in 1988-89/90 and eventually, all the workers were only marking their attendance till the premises were taken in possession by way of acquisition by Mazgaon Dock Ltd. on 12th May, 1997. The Respondent No. 1 then filed a winding up petition in the High Court of Bombay some time in May, 1997 and the said petition is aviating disposal.

12. Reverting back to the 3 Complainants, whose complaint we are to decide, it may be mentioned that under serious orders, certain amount was deposited by the Respondent No. 1 in the Court and they have been paid all the back wages till the and of 31st March, 1995.

13. It is claimed by the Complainants that the Respondents by not implementing the award of the Labour Court, have committed an unfair labour practice within the meaning of item 9 of Schedule IV of the Act. They also claimed they are entitled to the further wages for the subsequent months.

14. At the time of arguments, the learned Advocate for the Complainants submitted that the settlement which the other workmen and the union have signed accepting the cut-off date to be 31st March, 1995 cannot be applied to the Complainants *ifso facto* because they were not the parties to those settlements. Not only this but they were not the members of union and they are entitled at least to get the wages and other benefits till the date of handing over the possession to Mazgaon Dock Ltd. It is admitted that the premises have been handed over to Mazgaon Dock Ltd. On 12th May, 1997. The Complainants have agreed that they have received the wages including back wages till the end of March, 1995, now the dispute remains only to find out as to whether the Complainants are entitled to get further wages from 1st April, 1995 onwards till 12th May, 1997 the date on which the premises of the Respondent No. 1 were handed over to Mazgaon Dock Ltd.

15. The Respondents by filing the written statement at Exh. C-3 denied to have committed any unfair labour practice. They also claimed that because of the financial crunch, they could not pay the wages earlier. It is their claim that when almost all the workers have been given the terminal benefits till the end of 31st March, 1995, it will be unjust to give any benefits beyond that terminal date to the 3 Complainants who are before the Court.

16. Following issues were framed in the matter at Exh. 0-9.

Issues	*Findings*
(1) Do the Complainants prove the unfair labour practice under item 9 of Schedule IV of the M. R. T. U. & P. U. L. P. Act, 1971 ?	Yes.
(2) Do the Complainants prove that the amount of wages as contended in para 15(*d*) of the complaint ?	They are entitled to get terminal benefits by taking cut-off date as12th May, 1997.
(3) Whether Respondents prove that there is not any intentional indulgence in unfair labour practice under item 9 of Schedule IV of the M. R. T. U. & P. U. L. P. Act 1971 ?	No.
(4) What order and reliefs ?	As per final order.

Reasons

17. In support of the rival claims, one of the Complainants has stepped in the witness box at Exh. UW -1. He made a statement that he was in the service of the company till the end of 2000. According to him, apart from the 3 Complainants, there are several other members of the staff working in the company. The affidavit of one of the Officer who was working as Assistant Manager of the Respondent No. 1 company and whose services have been retained by the Company, has filed affidavit of Exh.21. According to him, when almost all the workmen have collected their wages as per the settlement, there cannot be any special favourable treatment to a very few workmen like the Complainants. He also adds that any special treatment being considered for the Complainants apart from discriminating will also give rise to further litigation by the majority workmen under the provisions of the Act. All the workmen including the Complainants were sitting idle all a long period and the Complainants very often used to leave the workshop after making their presence. He claims that the Respondent No. 1 has implemented the award by reinstating the Complainants and by paying the back wages as demanded and, therefore, the Complaint has become infructuous. He also stated that without prejudice, the Respondent No. 1 is aggreable to pay statutory compensation, P. F. Dues and Gratuity on the same basis as paid to other monthly rated/daily rated workmen to the Complainants by way of full and final settlement. In the cross examination, he has admitted that he is getting retainership of Rs.10,000 p.m. So also other Officer Shri. Sutaria and Shri. Bapat were getting Rs. 11,000 p.m. as retainership fees from the compeny, so long as their retainership was not discontinued. Shri. Samtani who expired in March, 2000 was getting Rs. 10,000 p.m. as retainership fee. A letter addressed to one Mr. Rawale, Member of Parliament from Mumbai by the Ministry of Finance and the compeny Affairs on 18th October, 2002 was also filed in the proceedings. For the sake of convenience, I feel it necessary to reproduce the said letter as it is :—

> "Please refer to your letter dated September 9, 2002 regarding payment of dues to the employees of M/s. Scindia Works Ltd. (SWL). The Scindia Steem Navigation Company Limited (SSNCL) had settled outstanding dues in respect of all workmen except eleven out of which seven daily rated workmen have not taken any payment. Three daily rated workmen received wages upto March, 31, 1995 but other terminal benefits were paid not because they approached Industrial Courts. One staff member was not paid as he refused to vacate the residential quarter. The matter was in Court and the Court has ordered on August 28, 2002 vacation of the residential quarters in two months' time. The fresh demands by the remaining workmen are based on the claim that the workers attended their duties till May 1997 and completed the manufacturing of hatch covers of Hindustan Ship Yard Ltd. However, I have been informed by SSNCL that the manufacturing of Hatch covers was completed way back in April, 1990, after which SWL had not taken any manufacturing or other activities.
>
> As the approved settlement entails payment of wages upto March, 31st 1995, it is not possible to reopen the issue and extend the cut off date. If any further concession is given to the remaining seven workers, there is the possibility of all the employees/workmen who have already accepted the final settlement upto March, 1995, might also seek similar benefits and open the door for a series of Court cases. Considering the fact that Government of India has agreed to the compromise settlement with a out. off date of March, 31, 1995 purely on

humenitarian consideration, it is not proper on the part of the remaining workmen to dishonour this agreement and continue to dispute it. I would, therefore, request you to impress upon them to submit their documents to SSNCL for getting their dues as per the settlement already arrived at".

18. It was submitted by the learned Advocate for the Respondents that the complaint deserves to be dismissed because all the terms of the award were satisfied. His second submission is that there was no *malafide* intention to delay the implementation of the award. According to him, the act may be illegal but it need not necessarily attract the provisions relating to unfair labour practice. Reliance was placed on the following cases :—

1. General Workers Union *Versus* Sangli Municipal Council, 1984 (48) FLR-411.
2. C. N. Karandikar & Ors. *Versus* V. D. Sugar Institute & Ors. 2000-I-CLR-176.

The learned Advocate for the Complainant on the other hand, claims that the Complainants are entitled to get full wages till end of May, 1997 and because the back wages were delayed, they are also entitled to get the interest on the said amount.

19. The purport of the letter of Government of India which has been reproduced above indicates following :

1. Except 11, all the workers have settled their dues.
2. Of the aforesaid 11 workmen, there are 7 daily rated workmen.
3. The terminal benefits were not paid to 3 employees and only wages were paid to them till the end of March 31, 1995 because they approached the Industrial Court.
4. One Staff member was not paid as he refused to vacate residential quarter.
5. The approved settlement entails payment of wages upto March 31, 1995 and it is not possible to reopen the issue and extend the cut-off date.
6. If any further concession is given to the remaining 7 workers, there is a possibility of all the employees/workmen who have already accepted the final settlement upto March 1995 might also seek similar benefits, and open the door for series of Court cases.

20. The question of the workers who have accepted their terminal benefits and shook hands with the employer again coming to claim the additional wages would not arise. A limited number of workmen have been left out whose dues are to be settled. Out of these remaining workmen, 3 Complainants are there. Admittedly, the three Complainants were not the members of the union with whom the settlement was signed. Therefore, they cannot be bound by the said settlement. The case of the three Complainants will have to be considered on altogether different footings. They will have to be paid the wages till the end of 12th May 1997 the dated on which the premises of the Respondent No. 1 company were given possessing of Mazgaon Dock Ltd. On that day, the workshop can be said to have literally closed for all the purpose and the terminal benefits will have to be given to the three Complainants by treated that they were in the employment of the Respondent No. 1 till the end of 12th May 1997. Hence, the order.

Order

(*i*) The complaint is hereby allowed in part.

(*ii*) It is declared that the Respondents have engaged in unfair labour practice within the meaning of item 9 of Schedule IV of the Act.

(*iii*) The Respondent No. 1 is directed to treat the three Complainants in service till the end of 12th May 1997 and pay them wages and other terminal benefits treating 12th May 1997 as a cut-off date in their case.

No order as to costs.

P. K. CHAVARS,
President,
Industrial Court, Mumbai.

Bombay,
Dated the 25th November 2003.

K. G. SATHE,
Registrar,
Industrial Court Maharashtra, Mumbai.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

Complaint (ULP) Nos. 158 of 2002.—1. Shri Annaso Shivgonda Patil, At Post Chandur, A-Ward 39, Tal. Hatkanngale, District Kolhapur. 2. Shri Nallappa Shankar Moade, Ratneparvati, Vasahat Room No. 82, At post. Korochi, Taluka Hatkanangale, District Kolhapur.—*Complainants.*—*Versus*— The Executive Director, Deshbhakt Ratnappa Kumbhar Panchganga Sahakari Sakhar Karkhana Ltd. Ganga Nagar Ichlkarnji, Tal Hatkanangale, District Kolhapur.—*Respondents.*

In the matter of Complaint U/s. 28(1) read with items 9 and 10 Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Apearances.—Shri Jangle, representative for the Complainants.

Shri. D. N. Patil, Advocate for the Respondent.

JUDGEMENT

This is a complaint purported to be under section 28(1) read with item 9 and 10 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971.

2. Admittedly, the Complainants are in employment of the Respondent Sugar Factory. Complainant No. 2 was suspended on 29th December 2001 pending on enquiry. He was then served with chargsheet dated 6th April 2001. Likewise, Complainant No. 1 was suspended *Vide* order cum-chargesheet dated 6th May 2002.

3. It is stated in both suspension orders that the Complainants will be paid subsistence allowance as per standing orders of the sugar factory. Now, their enquiries are in progress. It is also an admitted position that the sugar factory has its certified Standing Orders settled under Bombay Industrial Act, which provide that the suspended employee is entitled to subsistence allowance at such rate as may be fixed by the suspending authority but the rate so fixed shall not be less than 1/3rd of the basic wages and dearness allowance drawn by the employee immediately prior to his suspension allowance. Presently the Complainants are paid subsistence allowance at the rate of 1/3rd basic wages and dearness allowance.

4. It is case of the Complainant that Government of Maharashtra has notified Model Standing Orders for the sugar industry under the Industrial Employment (Standing Orders) Act, 1956. Those Model Standing Orders are more benefitial to them as more amount of subsistence allowance is notified in those Model Standing Orders. As such, they are suffering financially as well as unable to properly put their defences in the enquiries. It is then alleged that therefore provision of paying 1/3rd wages as subsistence allowance during the entire period of their suspensions is bad in law.

5. It is further contended that the sugar factory is bound to pay subsistence allowance as notified in the Model Standing Orders for the Sugar Industry under the Industrial Employment (Standing Orders) Act. It is alleged that it certified Standing Orders are in conflict of Sec. 10A of industrial Employment (Standing Orders) Act. then provision of Sec. 10A will prevail. According to the Complainants, therefore, payment of subsistence allowance by the sugar factory as per the certified standing orders is an unfair labour practice under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

6. On above averments, Complainants have prayed for requisite declaration of an unfair labour practice, directions to pay subsistence allowance with retrospective effect at the rate stated in the notified Model Standing Orders for the sugar industry under the Industrial Employment (Standing Orders) Act and other consequential reliefs.

7. The Respondent-sugar factory filed its written statement at Exh. C-3 and traversed all material allegations made by the Complainants. It contended, at the outset, that the complaint is not maintainable for non-joinder and mis-joinder of necessary and proper parties as well as barred by limitation. It is then contended that it is government by the Standing orders settled under section

55 of the Bombay Industrial Relations Act and Model Standing Orders framed and notified by Government of Maharashtra for sugar industry under the Industrial Employment (Standing Orders) Act are in-applicable. In fact, the settled Standing Orders are determinative of relations between the parties as provided under section 40 of the Bombay Industrial Relations Act. As such, it is not liable to pay subsistence allowance as per Model Standing Orders notified under the Industrial Employment (Standing Orders) Act for sugar industry. It is then explained that the Standing Orders Act is in applicable as per Section 1(4) thereof and hence question of conflict between the Model Standing Orders under the Standing Orders Act and the certified Standing Orders under the B. I. R. Act does not arise at all. Finally, the sugar factory justified its action and prayed for dismissal of the complaint.

8. Considering rival pleadings, following issues were framed by me at Exh. 3. :

(*i*) Do the Complainants prove that provision of paying 1/3rd wages as subsistence allowance during the entire period of his suspension, provided in the certified/settled Standing Orders applicable to the Respondent, is bad in law ?

(*ii*) Do the Complainants prove that the Respondent is bound to pay subsistence allowance as provided under section 10A of the Industrial Employment (Standing Orders) Act, despite a provision in the settled Standing Orders ?

(*iii*) Do the Complainants prove that the Respondent has engaged in unfair labour practices under items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act ?

(*vi*) What order ?

9. My findings, on above Issues, are as under :

(*i*) No.

(*ii*) No.

(*iii*) No.

(*iv*) Complaint is dismissed.

Reasons

10. Objection of the Respondent-sugar factory regarding non-joinder of necessary and proper parties does not stand to reason. Common questions of law are arising in this case, and relief claimed is also same. As such, one complaint by the two Complainants is maintainable. I am fortified in having this view as per decision in Vilas Dhanraj Gosewade and Ors. *Versus* Maharashtra State Road Transport Corporation reported in 1993, I-CLR at page No. 1054. The Complainants produced copies of their suspension orders and the chergesheet with list Exh. U-5. The sugar factory produced copy of the Standing Orders settled under section 35 (2) of the Bombay Industrial Relations Act with list Exh. C-4. None of the parties lead oral evidence.

11. It has come on the record that Deputy Commissioner of Labour, Bombay has settled the Standing Orders under section 35(2) of B. I. R. Act for the employees other than those engaged in agriculture or agricultural operations of the Respondent-sugar factory.

12. Shri Jangle, learned representative of the Complainants argued that Model Standing Orders for the Sugar Industry notified under the Standing Orders act are more benefitial to the Complainants and will prevail upon the settled Standing Orders for the Respondent. He took me through section 10A of Standing Orders Act, for that purpose. He then relied upon decisions in Kishore Jaikishandas Icchaporia *Versus* M. R. Bhope, Presiding Officer, Labour Court & Ors. Reported in 1987, II CLR at page No. 61 and S. M. Puthran *Versus* Rallies India Ltd. & Anr. Reported in 1998, II CLR at page-270. He further submitted that payment of 1/3rd wages as subsistence allowance and that too during the entire period of the suspension is totally unjustifiable. The Complainants have to properly defend themselves in the enquiries as well as to maintain their families. Therefore, Model Standign Orders must prevail over the Certified Standing Orders.

13. Shri Patil learned Advocate representing sugar factory replied that provisions under section 40A and Section 41 of the B. I. R. Act as well as section 1(4) of the Standing Orders Act are conveniently ignored by the Complainants. Those provisions clearly provides that provision of Standing Orders Act shall not apply to any industry to which B. I. R. Act is applicable. As such, the decisions relied by representative of the Complainants are in applicable. Section 40 of the B. I. R. Act says that settled Standing Orders shall be determinative of the relations between employer and employees. As such, the Complainants are bound by the settled Standing Orders. He relied upon decision in Anjani Kumar Co. Ltd. *Versus* Manubai Kashinath & Ors. Reported in 1989. II-CLR at page-125.

14. I am respectfully bound by the decisions in Icchaporias and Puthran's case. Section 10A of the Standing Orders Act provides that provisions 10A of the Standign Orders Act provides that provisions there under in relation to the payment of subsistence allowance shall prevail over the provisions of the Model Standing orders Act. However, Sec. 1(4) thereof says that said Act will be inapplicable to any industry to which provisions of Chapter VII of the B. I. R. Act are applicable. Likewise, Section 41 of the B. I. R. Act says that provisions of the Industrial Employment (Standing Orders) Act shall not apply to any industry to which provisions of Chapter-VII are applied. Consequently, it has to be accepted that Standing Orders Act and the provisions there under are in-applicable to the Respondent-sugar factory and the decisions relied by Shri Jangle are in applicable.

15. Settled Standing Orders provide minimum subsistence allowance of 1/3rd of the basic wages and dearness allowances. Sec. 38(2) of the Bombay Industrial Relations Act provides for alterations in Standing Orders. Sec. 40 thereof says that the Standing Orders shall be determinative. Therefore, it cannot be accepted that provisions of paying 1/3rd wages as subsistence allowance is bad in law on the ground that Model Standing Orders notified under the Standing Orders Act are more benefitial to the Complainants. The proper remedy for the Complainants is to move for alteration of Standing Orders according to the provisions of law. Accordingly, I answer issue No. 1 and 2 in the negative.

16. Considering negative findings of issue No. 1 & 2, I hold that no unfair labour practice is proved by the Complainants. Accordingly, I answer issue No. 3 in the negative and pass following order :

Order

(i) The Complaint is dismissed.

(ii) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 20th November 2003.

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